STUDIES IN USUL UL FIQH

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INTRODUCTION

"Today have I perfected your Deen, completed my favour upon you, And have chosen for you Islam as your Deen." (TMQ Al-Ma'ida: 3)

In this Ayah, as well as many others, Allah (SWT) reminds the Muslim Ummah of the value and regard that He (SWT) has for the message of Islam. This message is unique in comparison to the previous Messages in several ways.

It is the last and final Message for humanity from Allah (SWT). The followers of this Message have the honour of implementing and carrying it to other nations without the presence of their Messenger (Muhammed (SAW)).

In contrast, the Ummahs before the Message of Muhammed (SAW) were led by their respective Prophet or Messenger. This honour manifests itself in Allah's (SWT) promise that the Muslim Ummah would be the first to enter Paradise. Therefore, the people who have entered this Deen are truly the fortunate ones.

The Muslim Ummah earned this honour by realising the necessity of implementing and maintaining Islam. They were its guardians even when they were under the brutal occupation of Mongols. In fact, during the occupation they were able to dramatically influence the occupiers with the Islamic ideology. This unprecedented event exemplifies the trust and the clear-cut understanding of Islam that Muslims possessed. What other nation was able to influence and change its conquerors, such that they would start carrying the Deen of the conquered?

It is with a feeling of regret and sorrow that today we witness Muslims, either leaving or only partially accepting Islam. Muslims have tried to mix its thoughts and values with that of other ideologies. Its laws are partially implemented along with those of other ideologies. Islam for the most part is generally known by its rituals to its followers and thus they convey it to other nations as such.

However, this Deen is still alive and intact in the Qur'an and Sunnah. It is from these two sources that we will explain the nature of Islam and fundamental elements associated with its foundation of law (Usul al Fiqh), Insha'Allah.

Islam was not revealed all at once, and is not just a set of "do's" and "don'ts" like any constitution or legal document. In contrast, Islam offered solutions to the day to day problems as they were encountered by the Prophet (SAW) and the Sahabah (RA)

Islam provided a definite and clear vision to the Prophet (SAW) on how to live up to its ideology. Islam did not only provide and explain its values and thoughts; moreover, it provides a comprehensive set of legal laws regarding all facets of human existence. The implementation of these laws brought unheralded tranquillity and justice in the society.

In essence, Islam can be defined as a composition of unique and unparalleled ideas, values, thoughts, guidelines, and laws which Prophet Muhammed (SAW) expressed or applied during his (SAW) life.

The Aqeedah of Islam surpasses the "Aqeedah" of capitalism / democracy, in that it makes the human being subservient to his Creator rather than to his own desires. The simplicity of Islam frees the human being from the slavery to anything other than Allah (SWT). The Aqeedah of Islam orients a person's thinking to seek the pleasure of Allah (SWT) as opposed to self benefit and material pleasure.

The laws of Islam are of the same nature as its Aqeedah. In that they are both revealed by Allah (SWT). The laws neither favour the working nor the elite class in the society. These are qualities of man-made laws which the Shariah transcends. Consequently, no Muslim, whether rich or poor, would feel any hesitation or regret in implementing the Islamic laws.

However, presently, hesitation and scepticism are prevalent at the Ummah level. We will examine and reflect on one of the major causes of such a decadent attitude, ie the lack of cohesive understanding of issues surrounding Fiqh (Islamic Laws).

It is with this purpose of developing a cohesive understanding of Usul al Fiqh that we have put forward this effort.

CHAPTER 1.0

BASIC TERMS IN ISLAMIC JURISPRUDENCE

1.1 FIQH

Linguistically, Fiqh implies having knowledge in depth. As a juristic term, Fiqh has two meanings:

A. Having the knowledge of the rulings of Shariah (Islamic Law) which are extracted from the legislative sources. As an example, a Faqih would know the ruling for the issue of abortion; in addition, he would know how and from where this ruling was extracted.

B. All the Islamic laws. This definition is synonymous to the term Shariah.

1.2 USUL AL FIQH

Usul al Fiqh is the collection of principles pertaining to the methodology for the extraction of Fiqh. The concept of Usul al Fiqh is comparable to adhering to the methodology when conducting a scientific experiment. Similarly, adhering to the methodology in deriving Fiqh (rulings) is referred to as Usul al Fiqh. This methodology provides a way for a person to derive Islamic rulings from the legislative sources in Islam.

The collection of principles related to Usul al Fiqh are many. A few examples of these rules are discussed in the following section.

A. **Legislative Sources**

Adopting specific sources to derive laws is a major subject in Usul al Fiqh. The Qur'an, Sunnah, Ijma as Sahabah (consensus of the Companions) and Qiyas (analogical deduction) are four sources in Islam which are accepted by almost all of the scholars. However, there are other additional sources such as Maslaha al Mursalah (benefit) or Ijma al Ummah (consensus of the Ummah) which are not widely accepted.

B. **Arabic Language**

Within the Arabic language, there are rules for understanding the structure of an Ayah or Hadith. The rules of grammar in the Arabic language define the meaning of the Ayah or Hadith. Therefore, understanding the rules of grammar and their application, is one use of the Arabic language in Usul al Fiqh.

C. **Interpreting the text of Qur'an and Sunnah**

Unless the text of the Qur'an and Sunnah is correctly understood, no ruling can be deduced from it. The linguistic structure of the text in Qur'an and Sunnah varies from one style to another. Some examples of these linguistic styles are: Thanniy (speculative text), Qatai (definitive text), Amm (general text), Khass (specific text), Haqiqi (literal text), and Majaazi (metaphorical text). The rules to distinguish and differentiate between these styles is an important subject in Usul al Fiqh.

Another essential aspect involved in interpreting the text of the Qur'an and Sunnah are issues surrounding abrogation of rulings from the Qur'an and Sunnah. The study of abrogation involves issues such as, what constitutes abrogation, how to understand it in relation to other Ayahs or Ahadith, and how to reconcile these differences.

Some Muslims claim there is no need for Usul al Fiqh, thinking one can directly go to the text of the Qur'an and Sunnah and derive laws. Such a claim really illustrates the ignorance in understanding Islam. It is impossible to derive laws without being equipped with the necessary tools. These tools enable us to understand the text of the Qur'an and Sunnah, and without understanding the text, one would not be able to extract laws.

As an example, without being aware of the rules of Arabic grammar for interpreting the text of Qur'an and Sunnah, one would not be able to differentiate whether the command in the Ayah or Hadith for a certain action is Haram (forbidden) or Makruh (undesirable). **Therefore, Usul al Fiqh is a definite prerequisite to derive rulings.**

Since rulings are derived based on Usul al Fiqh, a variation in Usul al Fiqh may result in different rulings. This is one of the reasons that there might exist more than one ruling one some issues.

The end product of Usul al Fiqh is Shariah (or Fiqh). The difference between Usul al Fiqh and Shariah is that the latter is concerned with the

rulings related to our actions, and Usul al Fiqh is concerned with the methodology applied to deduce such rulings.

1.3 SHARIAH

The linguistic meaning of the word Shariah is a non-exhaustive source of water which people satisfy their thirst. Thus, the linguistic significance of Shariah is that the Islamic laws are effectively a source of guidance. As water is the fundamental basis of life, the Islamic laws are an essential source for guiding human life.

Shariah is composed of all the laws derived from the legislative sources of Islam. These laws are not just limited to areas covering marriage or divorce; rather, the Islamic laws cover every action performed by an individual or a society. The term Shariah is also a synonym for Fiqh.

1.4 HUKM SHARII

The text of both the Qur'an and Sunnah address many topics such as, stories of previous Ummahs, the Day of Judgment, and others. However, the text which specifically addresses our actions of what to do or what not to do is referred to as Hukm Sharii.

The term Hukm Sharii, in Arabic, means the address of the Legislator related to our actions. Islam addresses all of our actions, whether they are permitted or not. Accordingly, all of our actions have to be guided by the Hukm Sharii. Allah (SWT) says:

"Whoso rules not according to what Allah has sent down.... they are the disbelievers.... they are the wrongdoers...... they are the transgressors." (TMQ Al-Maidah: 44-47)

"It is not for any believing man or woman, when Allah and His Messenger have decided a matter, to have any choice for themselves in their affairs. For whoever rebels against Allah and His Messenger has gone astray into manifest error." (TMQ Al-Ahzab: 36)

1.4.1 TYPES OF HUKM SHARII

Many Muslims are too quick to conclude that something is either Haram (prohibited) or Fard (compulsory) after a quick reading of an Ayah or a Hadith. Not all commands in the legislative sources are Fard or Haram. the rules which are used to differentiate the types of Hukm Sharii are again related to Usul al Fiqh.

In reality, the Hukm Sharii can be understood in five general ways.

A. FARD (Compulsory)

- If the request to do an action is decisive (Talab Jazim) then it is a Fard or Wajib; both have the same meaning. A person who complies with a Fard will be rewarded, while one who disobeys will be punished.

Example: Performing and establishing Salat, paying Zakat, participating in the Jihad, being ruled by Islam, Muslim women wearing Hijab etc.

B. HARAM (Prohibited)

- If the instruction is connected with a decisive command of refraining from an action then it is Haram or Mahthur. If the Haram is committed, then the person will be punished, but if the Haram action is avoided, the person will be rewarded.

Example: dealing with Riba, gambling, promoting nationalism or democracy etc.

C. MANDUB, SUNNAH OR NAFILAH (Recommended)

- If the instruction to do an action is not firm, then it is considered Mandub. The one who performs it is praised and rewarded; however, the one who abstains from it is neither blamed nor punished.

Example: Attending to the sick, giving alms to the poor, fasting Mondays and Thursdays.

D. MAKRUH (Disliked)

- If the instruction of refraining from an action is not firm, then it is considered Makruh. The one who abstains is praised and rewarded while the one who does it is neither punished nor blamed.

Example: performing Salat between Fajr Salat and sunrise, eating garlic before going to the masjid for salat, etc.

E. MUBAH (Permissible)

- If the choice to do or not to do an action is left up to the person, then the action is called Mubah. One will neither be rewarded nor punished for an action falling under this category.

Example: Eating lamb or chicken, marrying up to four wives, etc.

Some of the Hukm Sharii such as Fard are divided into sub-categories. For example, Fard is divided into Fard al Ayn and Fard al Kifaya. **Fard al Ayn** is obligatory on every Muslim, such as praying five times a day; whereas, **Fard al Kifaya** is obligatory on the whole Ummah until part of the Ummah fulfills the Fard, such as the burial of a deceased Muslim. If a portion of the Ummah fulfilled this task, then this relieves the duty from the rest of the Muslims. Some of the other types of Hukm Sharii are also further sub-divided.

1.5 THE APPLICATION OF SHARIAH

The Shariah is not only limited to areas covering divorce or marriage. It covers the relationship between Man and Allah (SWT), Man and Himself, and Man and Man. In addition, to the method for applying these rules, implementing any rule requires having the knowledge of the situation, the rule and the method.

As an example, there is a general principle in Islam that a thief's hand should be cut off. However, if the individual steals food while hungry then this general principle is not applied in this particular situation. Consequently, the knowledge of how and when to apply a rule is obligatory.

A misapplication of the Shariah is applying the Islamic laws related to Hudud (punishment) while at the same time implementing an economic system based on capitalism. Islamic laws related to punishment were revealed to protect the society in which Islam is being applied.

How can the Islamic laws related to punishment be applied concurrently with capitalism, which thrives on exploiting the masses? How can anyone justify the Islamic punishment of cutting the hand of a thief while the thief is under the oppression of capitalism?

The punishment of cutting off the hand of the thief is based upon protecting the society where the Islamic system is in application, a system which functions to see to it that the basic needs of every individual in the State are met.

The Shariah should not be viewed as a burden or an obstacle in our lives; but rather, as a mercy from Allah (SWT). These laws must be understood as part of the Deen (a comprehensive way of life) revealed by the Creator. This Deen, Islam, requires a conviction that Islam is the only solution to our problems, it came from Allah (SWT), Who created us and thus knows what is best for us.

There is no reason for us not to obey any ruling from Allah (SWT). As mentioned earlier, the Islamic laws are Just because they are from Allah (SWT), in contrast to the oppressive man-made laws. Consequently, we should feel proud, happy, and grateful that Allah (SWT) has shown us the only correct way to obey Him (SWT).

Islam is a complete and thoroughly integrated unit that cannot be implemented partially. The implementation of the Islamic rules related to the economy necessitate the implementation of the rules of Zakah, Nafaqah, and Al-Jizyah, which in turn means the implementation of the economic system.

The execution of the economic system requires the implementation of the Ibadaah, social system, rules related to the People of the Book, Islamic foreign policy, and rules related to the Khaleefah all together. The Islamic system is inter-connected, one part helps the implementation of the other part.

Implementing only parts of Islam and leaving others results in chaos as is evident today. For instance, Allah (SWT) has permitted divorce to solve a problem, but today divorce itself is a problem rather than a solution due to the misapplication of this particular solution and Islam in general.

CHAPTER 2.0

DALEEL

Linguistically, Daleel means a proof, indication, or an evidence. As a term, Daleel means the source or evidence for a thought, concept, or a ruling. Any law or ruling must have a Daleel, which can be from Qur'an, Sunnah, or a source which Qur'an and Sunnah directed us to adopt. These sources will be discussed later in the book. Any ruling from the text of either the Qur'an or Sunnah is considered a Daleel.

For example, the Qur'an states:

"Let there arise out of you a group of people inviting to all that is good (Islam) and enjoining what is right and forbidding what is wrong." (TMQ Al-Imran: 104)

This Ayah is considered a Daleel for the obligation of establishing a Hizb (party or group) calling for Islam and enjoining what is Maruf (good) and forbidding what is Munkar (bad).

An example of a Daleel from the Sunnah is the prohibition to the call for nationalism. The Prophet (SAW) said about all types of Asabiyah (nationalism, racism, tribalism):

"Leave it, it is rotten" (Bukhari and Muslim)

2.1 STRUCTURE OF DALEEL

As mentioned earlier, a Daleel is an evidence for an opinion, concept, ruling, or a thought from Islam. There are two aspects related to any Daleel, Riwayah (reportage) and Dalalah (meaning).

The **Riwayah** covers issues related to how the information was relayed to us, which includes the number and the integrity of the reporters.

The **Dalalah** is related to the meaning of the text in the Daleel. There are also two terms used in connection with Riwayah and Dalalah, Qatai and Thanniy.

Qatai is defined as being conclusive or decisive, while Thanniy is the opposite of Qatai and means non-definite or indecisive.

2.1.1 RIWAYAH

Any Ayah from the Qur'an or Hadith Mutawatir is considered Qatai (conclusive) in its Riwayah (report).

The Qatai in Riwayah implies that the evidence is authentic without any shadow of doubt. This authenticity is established based on the methodology of transmission.

The methodology by which the Qur'an was transmitted to us precludes any possibility of fabrication. The report was transmitted generation by generation in exactly the same manner. It is impossible for an entire generation to fabricate, erase, or add contents to the Qur'an. It is inconceivable to believe that every single individual in that generation assembled together and agreed to add or delete parts of the Qur'an. Everyone in that generation was reciting the same contents of the Qur'an, thus authentifying its contents.

Hadith Mutawatir was not transmitted generation by generation, nut rather by a large number of people. Due to the large number of people reporting the Daleel, and their diversity of residence, their established reliability and conviction, it is inconceivable that this Daleel could be wrong.

Any report of information other than through the Qur'an or Hadith Mutawatir, such as Hadith Ahad, is considered Thanniy (non-definite), meaning that there is a minute possibility that the Daleel could contain error.

To summarise:

Riwayah (Reportage)

- **Qatai (Conclusive)**
  1. Qur'an
  2. Hadith Mutawatir

  eg "*Whosoever lies about me deliberately, let him take his place in the Hell fire.*"

- **Thanniy (Non-Definite)**
  1. Hadith Ahad

  eg. "Leave it, it is rotten". (Refers to all forms of Asabiyah, racism. Bukhari and Muslim).

2.1.2 DALALAH

The second aspect of the Daleel is the Dalalah (meaning). If the text of Qur'an, Hadith Mutawatir or Hadith Ahad is clear, specific, and has only one meaning, then it is considered Qatai. The text of a Qatai Daleel has to have only one meaning and cannot be open to any other interpretation. If the text is open to more than one interpretation, then it is considered Thanniy. Since interpretations are due to the Arabic language, any interpretation has to be justified through the Arabic language.

To summarise:

Dalalah (Meaning)

- **Qatai (Conclusive)**
  - **A1.** Qur'an (one meaning)
  - **A2.** Hadith Mutawatir (one meaning)
  - **A3.** Ahad Hadith (one meaning)

- **Thanniy (Non-definite)**
  - **B1.** Qur'an (more than one meaning)
  - **B2.** Hadith Mutawatir (more than one meaning)
  - **B3.** Ahad Hadith (more than one meaning)

A1. EXAMPLE OF QUR'AN WITH A QATAI (CONCLUSIVE) MEANING

"What your wives leave, your share is a half, if they leave no child". (TMQ An-Nisa: 12)

"Those who accuse chaste woman of zina (adultery) and fail to bring four witnesses (to prove it) flog them eighty stripes." (TMQ An-Nur: 4)

The quantitative aspect of these rulings, namely one half and eighty are clear and therefore cannot be open to any other interpretations.

A2. EXAMPLE OF HADITH MUTAWATIR WITH QATAI (CONCLUSIVE) MEANING:

"Whosoever lies about me (Prophet Muhammed (SAW)) deliberately, let him take his place in the hell-fire."

This Mutawatir Hadith is very clear in its subject; thus there is only one understanding from the text, that whoever lies about what Prophet (SAW) said intentionally, he will go to hell-fire.

A3. EXAMPLE OF HADITH AHAD WITH QATAI (CONCLUSIVE) MEANING:

It is reported from a non-Mutawatir Hadith that the Prophet (SAW) fasted 6 days in Shawwal. The conclusive meanings from this Hadith are the following:

a) Permissibility of fasting 6 days in Shawwal.
b) Except on the first day, since it is the day of Eid, and it is Haram to fast on Eid.

B1. EXAMPLE OF QURANIC AYAH WITH A THANNIY (NON-DEFINITE) MEANING:

In Surah al-Maid'a Ayah 6, Allah (SWT) says if you *la mastum* the women it breaks the wudhu. The word *la mastum* has been interpreted as having two meanings:

a) Touching
b) Sexual intercourse

Thus the Ayah has a Thanniy Dalalah, ie it could mean touching women breaks the Wudhu, or sexual intercourse with a woman breaks the Wudhu.

B2. EXAMPLE OF HADITH MUTAWATIR WITH A THANNIY (NON-DEFINITE) MEANING:

It was reported that the Prophet (SAW) used to take off his Ihram in a specific manner. However, when the Sahabah (RA) told the Prophet (SAW) that they took it off in a manner different from the way he (SAW) took it off, the Prophet (SAW) approved of their actions.

Though this incident is Mutawatir, the rules to take off ones Ihram are many.

B3. EXAMPLE OF A HADITH AHAD WITH A THANNIY (NON-DEFINITE) MEANING:

It is reported from a non-Mutawatir Hadith that the Prophet (SAW) fasted 6 days in Shawwal. The non-definite meanings of this Hadith are:

a) Whether the six days of fasting are consecutive or not?
b) Fasting in which part of Shawwal?

So far we have discussed the Qatai and Thanniy aspects of both Riwayah and Dalalah separately. However, the method to determine whether the Daleel (both in Riwayah and Dalalah) is Qatai (both in Riwayah and Dalalah) is Qatai (conclusive) or Thanniy (non-definite) is the following:

1.	Qatai Riwayah	+	Qatai Dalalah	=	Qatai Daleel
2.	Thanniy Riwayah	+	Qatai Dalalah	=	Thanniy Daleel
3.	Thanniy Riwayah	+	Thanniy Dalalah	=	Thanniy Daleel
4.	Qatai Riwayah	+	Thanniy Dalalah	=	Thanniy Daleel

Any idea, thought, or concept related to the Aqeedah has to be based upon a Qatai Daleel. As an example, the concept that Angels exists is based upon a Qatai Daleel not Thanniy. Also, in Usul al Fiqh, to establish a source for extracting rulings, the source must based upon a Qatai Daleel as well.

As an example, to consider Ijma as Sahabah (consensus of the Companions) as a source of rulings, the Daleel to prove the authority of Ijma as Sahabah has to be Qatai both in Riwayah and Dalalah, though a ruling can be derived from either Qatai or Thanniy Daleel.

One might wonder why understanding the text of Qur'an and Sunnah is so complicated?

By examining the text of Qur'an and Sunnah one can see that it is limited in its volume. With its limited text one can generate rulings to any problems affecting us anywhere and anytime until the Day of Judgment.

It is a miracle from Allah (SWT) that the text of the Qur'an and Sunnah have the ability to express numerous rulings from a single Ayah and Hadith; whereas, the ability to understand many meanings from a single text cannot be found in any other legal text in the world!

The challenge is for Muslims in each generation to try to understand the text and relate it to their lives since the Qur'an and Sunnah are relevant to all times and places.

Besides the point mentioned above, we have to realise that there are rules and guidelines related to understanding and deriving laws from the Qur'an and Sunnah. No one, without being acquainted with these rules (Arabic language, rules which differentiate one type of text from another, etc.) can understand the text of Qur'an and Sunnah.

Even to understand man-made constitutions, one has to spend a few years studying and understanding the text. So, how can we expect an individual who is unfamiliar with the Usul al Fiqh to open up the Qur'an and Sunnah and start extracting laws from it.?

CHAPTER 3.0

QUR'AN

Qur'an is derived from the word Qara'a, which means to read or recite. Therefore, Qur'an linguistically means the book that has been read or recited.

As a term, Qur'an is Allah's (SWT) miraculous speech revealed unto Muhammed (SAW) in Arabic and transferred to us by Tawatur method. The recitation of Qur'an is considered as an Ib'adah (act of worship). By Allah's (SWT) speech it is meant that the Qur'an is the exact words of Allah (SWT). It was revealed to Muhammed (SAW) as it exists today. By miraculous it is meant that no-one can produce something similar to it.

The term "in Arabic" refers to the language of the Qur'an, not to its scope or ideas because Qur'an addresses all Arabs and non-Arabs. The rules of Qur'an are universal and not restricted to one ethnic group or a specific area or time.

By Tawatur method it is meant that it was conveyed to us by a group or people for whom it is impossible to lie or conspire to fabricate a lie. The Qur'an was transferred to us through an entire generation, not just by a group, to its successors, until it reached the present generation, without any interval in this transference.

Reciting Qur'an in Arabic by itself, without even comprehending its meaning is considered an Iba'adah. In this regard, Qur'an is different from Hadith which cannot be recited as an act of Iba'adah. However, thinking about the meanings of both the Qur'an and Hadith is considered an Iba'adah.

During the time of the Prophet (SAW), the text of the Qur'an was preserved in memory and also inscripted on flat stones, wood, and bones. Initially, Khaleefah Abu Bakr (RA) collected the Qur'an soon after the battle of Yamamah due to the martyrdom of many memorisers of the Qur'an. Zayd bin Thabit (RA), the scribe of the Prophet (SAW), was employed in the task of compiling the text.

During the time of the Prophet (SAW), Muslims used to recite the Qur'an in different ways, which were taught by the Prophet (SAW) himself. When the Sahabah (RA) emigrated to the conquered lands the Muslims in those areas recited the way that Sahabi (RA) recited. Consequently, there were some arguments as to which method of recitation was correct.

Khaleefah Uthman (RA) realised this problem and feared that the fate of the Qur'an would go the same way and be lost or corrupted as were earlier books of the revelation. In order to remove this danger, Khaleefah Uthman (RA) adopted one way of recitation and made seven copies. These seven copies were sent to different areas; the master copy was kept in Medina. All other copies existing at the time were destroyed.

The Qur'an was revealed with the words and its meanings intact; whereas, the Sunnah was revealed in meaning and the Prophet (SAW) expressed this meaning using his own words. The Qur'an was revealed in two distinct periods of the Prophet's (SAW) Dawah, in Mecca and Medinah.

A Surah is considered to be Makki if its revelation had begun in Mecca even if it contains Ayahs that were revealed in Medinah. The distinction between the Makki and Madini parts of the Qur'an is based on the information provided mainly by the Sahabah (RA).

CHAPTER 4.0

SUNNAH

Sunnah, linguistically, means a path or a way. As a juristic term "Sunnah" has different meanings to various disciplines of the Islamic culture.

- **To the Ulema of Hadith**

  Sunnah refers to all that is narrated from the Prophet (SAW), his acts, his sayings, whatever he has tacitly approved, and all the reports which describe his physical attributes and character.

- **To the Ulema of Fiqh (Jurisprudence)**

  Sunnah refers to the category of Mandub or Nafilah. In this sense, Sunnah is used synonymously with Mandub. As an example, praying extra prayers or fasting extra days other than in Ramadhan is Mandub or Nafilah.

- **To the Ulema of Usul al Fiqh:**

  Sunnah refers to another source of Shariah along with the Qur'an. Thus, in the usage of Usul al Fiqh, one might say that fasting days other than in Ramadhan is from Sunnah, denoting that this ruling has been validated by the Sunnah.

The usage of Sunnah in <u>Usul al Fiqh</u> should not be confused with the Sunnah in <u>Fiqh</u>. In Fiqh, the term Sunnah is synonymous to Nafilah or Mandub, meaning a recommended act. In Usul al Fiqh, it is a source for extracting rulings, and it establishes the following types of Hukm Sharii:

- **Fard:** For example, the method of praying the Salah is established from the Sunnah and not the Qur'an. The Qur'an issues the command to pray.

- **Haram:** Fasting on the day of Eid is Haram and is established from the Sunnah.

- **Mandub / Sunnah:** Fasting on Monday is Mandub and is established from the Sunnah.

- **Makruh:** Eating garlic before going to masjid is Makruh and is established from the Sunnah.

- **Mubah:** At times the Prophet (SAW) drank water while sitting or standing.

4.1 TYPES OF SUNNAH

A. Qawli (verbal): consists of the sayings of the Prophet (SAW) on any subject. Example: *"He who cheats is not one of us"*.

B. Taqiri (Approval): consists of the approval of the Prophet (SAW). If something was done in front of him (SAW) and he (SAW) didn't approve of it, then it is considered an approval. As an example, the Prophet (SAW) approved the way women prayed in the mosque, separate from the men, but in the same room.

C. Faili (Actions) consists of the Prophet (SAW)'s deeds and practices, such as the way he (SAW) used to pray or perform Hajj.

The following paragraphs address the actions of the Prophet (SAW) and their legislative impact. The actions of the Messenger (SAW) can be divided into three parts. The first section consists of those actions which were natural to him as a human being, secondly, actions which were specific to him as a Prophet (SAW), and thirdly, actions which carry legislative impact.

1. Actions as part of Prophet (SAW)'s Nature

These actions include the way he stood, sat, ate or drank. For example it is reported that when he (SAW) walked and wanted to turn his head to another direction, he (SAW) would turn his entire body. This type of action has no legislative impact, except in certain cases when he (SAW) recommended doing a particular action. Then such an action would be considered Mandub.
For example, there is a Hadith telling a Sahabi to eat with his right hand which shifts the action, initially falling under a mubah (permissible) category, to a Mandub (recommended) category. The Sunnah also

excludes specialised and technical knowledge, such as medicine and agriculture because it is not held to be part of the function of Prophethood.

2. Actions Specifically for the Prophet (SAW)

Allah (SWT) has sent the Messenger (SAW) with rules that are specifically related to him (SAW) only. Some examples of these rules are:

- He (SAW) was ordered to pray the Tahajjud and the Ishraq Salah as Fard on him (SAW).
- He (SAW) was allowed to continue his (SAW) fasting into the night.
- His (SAW) marriage contracts did not have to include a dowry (Mahr)
- His (SAW) wives could not remarry.
- He (SAW) was allowed to marry more than four wives at a time.

Whoever performs any of these actions is sinning because these actions are exclusively for the Prophet (SAW).

3. Actions of the Prophet (SAW) Carrying Legislative Consequences.

The kind of actions which carry a legislative consequences are of three types:

a) The action of the Messenger of Allah (SAW) which provides an explanation for a text.

If this explanation was for a rule or text that was obligatory, then the explanation also becomes obligatory. If the explanation was for a rule that was Mandub, then the explanation also becomes Mandub. Generally speaking, the explanation takes the same status as the rule. Some examples will clarify this principle.

The Qur'an obligates the establishment of the Salat. Any explanation of performing the Salat by the Messenger (SAW) is thus also an obligation. For example, he (SAW) recited Surah Fatihah while standing and always recited the Surah during each Rakah. Except for people who are excused due to physical disabilities, reciting Surah Fatihah must be done while standing in Fard prayers.
Allah (SWT) ordered the Messenger (SAW) to rule the people with what was revealed to him (SAW). Thus, the way the Messenger (SAW) ruled the people (by Islam) is an obligation. Some argue that the Messenger (SAW) did not leave details about the ruling, rather he (SAW) left general outlines, and that it is left to our intellect to innovate and initiate new forms of ruling. Many Muslims believe this point and are using democracy and parliamentary processes to rule the Muslims.

However, since any order that is addressed to the Messenger (SAW) is also addressed to all Muslims, the order to rule by the revelation is an order to all Muslims. The Qur'an warns us that those who do not rule by Islam are either Zhalim, Fasiq or Kafirs. When we study the Seerah, we find an abundance of details related to ruling by Islam. For example, the Messenger's (SAW) saying that:

"The children of Israel were sent Prophets. Every time a Prophet dies or was killed, another Prophet would succeed him. However, there will be no Prophet after me and there will be Khulafa and they will be many. So the Sahabah asked, 'What should we do?' He said, fulfill the Bay'ah to the first and then the one who succeeds him and give them their rights for Allah (SWT) will hold them accountable for their responsibilities."(Muslim)

In addition, the Prophet (SAW) said that there should be only one Khaleefah:

"If the Ba'ayah is given to two Khaleefahs, then kill the latter one." (Muslim)

He (SAW) also told us that whoever backs away from his Bay'ah, Allah (SWT) will be angry with him. The Seerah also defines the pillars of the State's ruling system **-** it being made up of the Head of State, Delegates and Executive Representatives of the Head of State, Governors, Provincial Governors, Amir of Jihad, Judges of the Judicial Branch, The Majlis of the Ummah (Consultation Assembly) and the Administrative Council.

Since these aspects were detailed as an explanation of the order to rule by Islam, this explanation takes the same status as the order and is thereby mandatory for us to implement. This explanation should refute any claim by any person that utilizing a democratic, parliamentary, republican, monarchical, or dictatorial method of ruling is within the boundaries of Islam.

Allah (SWT) ordered the Messenger (SAW) to carry the Islamic Dawah. Allah (SWT) says:

"Say (O Muhammed): this is my way (sabeel), I and whoever follows me call and invite to Allah..." (TMQ Yusuf: 108)

and He (SWT) also says:

"Invite to the way of your Lord with hikmah, and a magnetizing speech (maw'ithatul-hasanah), and debate with them with what is better (ahsan)." (TMQ An-Nahl: 125)

These Ayahs obligate us to carry the Islamic Dawah the way the Messenger (SAW) did. The Messenger of Allah (SAW) performed the Dawah as a part of a group or party. He (SAW) did not compromise any rule or letter in Islam, he (SAW) never adopted the principle of "If you can't beat them, join them."

The Messenger (SAW) and his Companions (RA), confronted the Meccan society, attacking their Aqeedah (beliefs), laws, rulers and concepts, always proposing Islam as the only alternative.

This group never engaged in any material struggle such as in terrorist actions, military actions, or sports training. Their struggle involved a political struggle with the leaders of the Meccan society like Abu Jahl, Abu Lahab, and Walid bin al-Mughirah and the ideological struggle of addressing the practices of cheating in the scales, burying the daughters alive, worshipping idols, etc. Consequently, carrying the Islamic Dawah today cannot be done but with the same prototype in mind.

Unfortunately, many movements are trying to patch and mend the illegal Kufr regimes that are ruling over them, and others have joined the cabinets of these regimes, or have participated in the system. These actions are invalid since the actions of the Messenger (SAW) in explaining the Dawah are the only actions that are binding on the Muslims, based on the principle that if the rule is an obligation, then the explanation of the rule is also an obligation.

b) **The actions of the Prophet (SAW) which fall under the category of Mandub or Nafilah.**

Examples of such actions are fasting 6 days during the month of Shawwal, making special Dhikr on occasions, and praying Sunnah Salat.

Following the Uswah (example) of the Messenger (SAW) means to perform the action in the same way he (SAW) performed it. So, if he (SAW) did an action as Mandub then we must follow him (SAW) in doing that action as Mandub. If the action is done as a Fard, then the emulation of that action has to be done as a Fard.

We cannot switch and do any action that he (SAW) did as a Fard and make it into a Sunnah, and conversely, we cannot change a Sunnah to a Fard. There are, however, some who feel that actions falling under this category are Fard (mandatory). This opinion is arrived at without a deep and comprehensive study of all the evidences and Daleel.

c) **The actions of the Prophet (SAW) which fall under the category of Mubah.**

Since the actions are permissible, they result in neither attaining the pleasure nor the displeasure of Allah (SWT).

An example of such an action is the time duration of ten years for the treaty of Hudaybiah. The ten years is not a fixed or set limit for treaties to be signed by the Khaleefah. Consequently, it is Mubah for the Khaleefah to sign a treaty for five or fifteen years. Another example is digging the ditch in the Battle of the Ditch. This tactic was used to defend Medinah. So today, digging the ditch does not have to be done.

4.2 BASIC TERMS IN HADITH

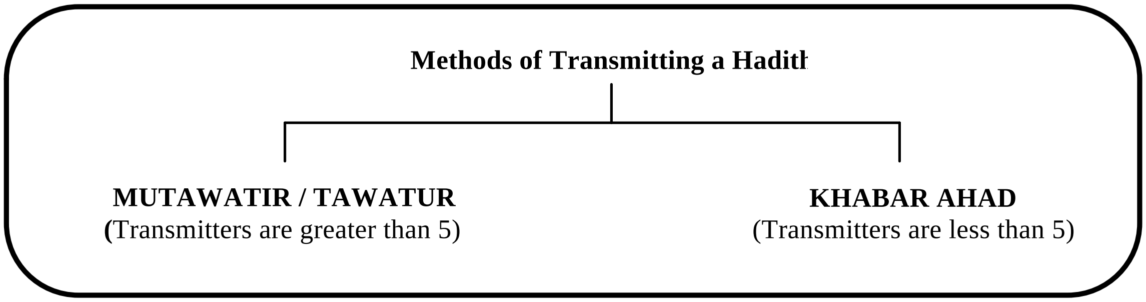
Sanad:	A chain of reporters leading back to the Prophet (SAW)
Tabaqah:	A class of reporters in the same generation, ie Sahabah, Tabi'een.
Marfu':	A Hadith whose Sanad leads to the Prophet (SAW)
Mawquf:	A Hadith whose Sanad ends with a Sahabi
Mursal:	A Hadith leading to the Prophet (SAW) but missing the name of the Sahabi who reported it.
Qudsi:	A Hadith whose Sanad leads to Prophet (SAW) and the Prophet (SAW) is reporting it from Allah (SWT).

The report of Hadith Qudsi can begin in one of two ways:

a) The Prophet (SAW) says reporting from Allah (SWT)....
b) Allah (SWT) has said as reported by His Messenger (SAW)...

4.2.1 TYPES OF HADITH

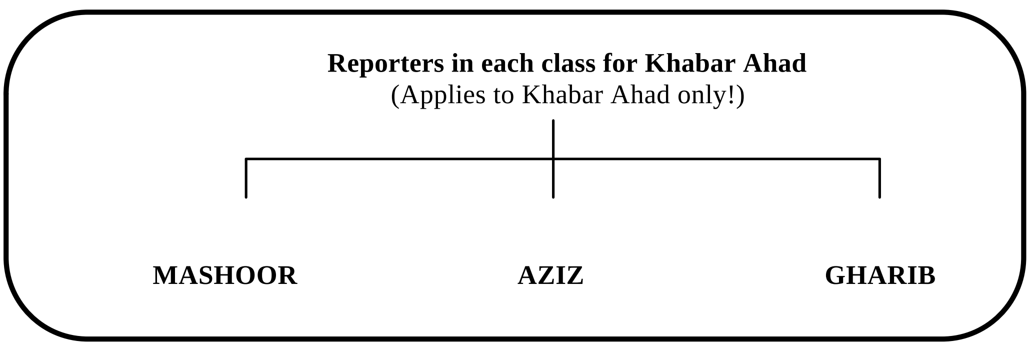
Different types of Ahadith exist due to the method of transmission, number of reporters in each class, and the authenticity of the Hadith.



Mutawatir / Tawatur: a Daleel transmitted by an indefinite number of people. Due to the large number of people reporting the Daleel and their diversity of residence, reliability, and conviction, it is inconceivable that this Daleel could be fabricated.

The minimum number of transmitters which are required to classify a Daleel as Mutawatir is generally five. However, some scholars may have a more stringent criteria. The character of the reporters narrating Mutawatir Ahadith has to be noble.

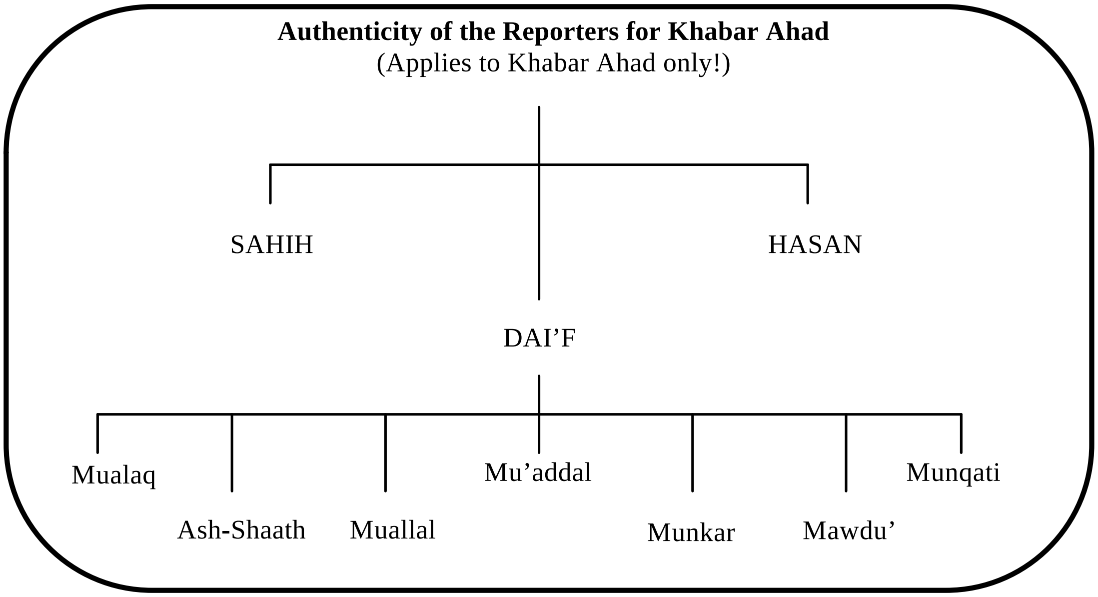
Ahad: Riwayah Ahad is a number less that the Mutawatir.



Mashoor: A Hadith reported by at least three individuals in every class (Sahabah, Tabi'een, etc.).

Aziz: A Hadith reported by at least two individuals in every class.

Gharib: A Hadith reported by only one individual in one or more classes.



Sahih:

A Hadith narrated by an Adl (not known for misconduct) and Dabeth (maintains accuracy of the report) person from another person of similar qualities until the end of the report. The report should also exclude any Shuthuth (disagreement with other credible reporters).

Hasan:

Has two definitions:

a) A Hadith which meets the requirements of Sahih to a lesser degree
b) A Hadith which is acceptable by the majority of the Fuqaha.

Dai'f:

A Hadith not meeting the requirement of either the Sahih or the Hasan Hadith. It can be one of the following:

Mualaq: A Hadith which is missing one or more reporters either at the beginning of the Isnad, in the middle or in the end.

Mu'addal: A Hadith which is missing two or more consecutive reporters.

Munqati: A Hadith which has interruption in the class.

Ash-Shaath: A Hadith in which one credible reporter reports something that disagrees with other credible reporters.

Muallal: A Hadith whose Sanad seems to be fine, but due to some reasons discovered by scholars, it is discredited.

Munkar: A Hadith in which uncredible reporters convey a message which is in disagreement with what was reported by credible reporters.

Mawd'u: A fabricated Hadith.

4.3 RECONCILING A PERCEIVED CONFLICT BETWEEN TWO OR MORE AHADITH

Some have raised the point that there often appears to be conflicting Ahadith on an issue. As a result, they have reached to the conclusion that we have to reject both of these seemingly conflicting Ahadith and others have even declared that the entire Sunnah must be rejected. Both of these approaches are completely wrong and absurd. However, one may wonder what should be done if there seems to be conflict between two Ahadith?

Firstly there can be no conflict whatsoever between the sayings and / or actions of the Messenger (SAW) except in such cases of abrogation. The Messenger (SAW) said:

"I used to prohibit you from visiting the graveyards, now go and visit them." (Muslim, Abu Daoud, An-Nisai and Al-Hakim).

In this Hadith the Prophet (SAW) used to prohibit Muslims from visiting the graveyards, however this rule is abrogated by the last phrase of the Hadith.

The rejection of the Sunnah cannot be claimed due to the cases of abrogation because the concept of abrogation is part of Islam. Also, in cases where abrogation occurs in the Qur'an, the Ayah is not abrogated, rather the rule which is extracted from the Ayah is abrogated. Consequently, one cannot delete an Ayah from the Qur'an because its rule is abrogated.

Secondly, sometimes the Sahabah (RA) reported a variety of actions by the Prophet (SAW). For example, there are reports that he (SAW) made Salat with his (SAW) hands on his (SAW) chest, and others said his (SAW) hands were on his midsection. This doesn't indicate a conflict, rather, it illustrates that he (SAW) was seen doing both and that either action is permissible during the Salat.

Thirdly, if there is a seeming conflict between the speech and action of the Messenger (SAW), then this action is specifically for him (SAW), while the text or the statement Is for the Muslims. An example of this is that he (SAW) used to continuously fast day and night, while he (SAW) prohibited the Sahabah (RA) from this practice.

Examples of some Ahadith in which there seems to be a conflict.

Regarding seeking the help of non-Muslims, we find the following Ahadith:

In one situation Aisha (RA) reported that when the Prophet (SAW) was on his (SAW) way to the battle of Badr, a very well known courageous man joined him at a place called Harratul Wabra. So the Sahabah (RA) were very pleased to see him. When the man saw the Prophet (SAW), he said "I have come to fight with you and to get a share of the war booty." So the Prophet (SAW) asked him, "do you believe in Allah (SWT) and His Messenger (SAW)." The man replied, "No". The Prophet (SAW) told him to return back since we (the Muslims) do not seek help from the Mushriks. The Prophet (SAW) proceeded on his way to Badr until he reached Al-Shajara. The man came again and told the Prophet (SAW) what he had told him (SAW) earlier. The Prophet (SAW) asked him the same question he (SAW) had asked the man before and then told him to return back since he (SAW) does not seek help from the Mushriks. As a result, the man returned back. The man joined the Prophet (SAW) again at Baida'ah. So the Prophet (SAW) asked him again "Do you believe in Allah (SWT) and His Messenger (SAW)." The man replied, "Yes", Then the Prophet (SAW) told him to hurry up and go fight." (Muslim & Ahmad)

In another occasion, "it is reported that the Prophet (SAW) was on his (SAW) way o the battle of Uhud until he reached Thanniyatul Wada'a. Here, he (SAW) met a regiment and asked, who are they? The Sahabah (RA) told him (SAW) they were from Banu Qaynuqa'a, the faction of Abdullah Bin Salaam. So the Prophet (SAW) asked them, will you become Muslims. They declined the offer. As a result, the Prophet (SAW) ordered them to leave saying "We do not seek help from the Mushriks." Thus, they became Muslims." (Al Baihaqi)

In other situations, the Messenger (SAW) sought the help of a Jewish individual of Khaybar and even allowed a Mushrik to fight with him (SAW). These Ahadith were used to justify the presence of the American troops in Saudi Arabia during the Gulf war.

However, they have been mis-quoted and misused. By scrutinising these Ahadith, one can see that the Messenger of Allah (SAW) used to <u>sometimes</u> allow only non-Muslims to fight with him (SAW) as individuals. While, he (SAW) refused the help of non-Muslim groups or institutions under their own banner. If a group comes to fight under their own banner, such as under the American flag, their assistance cannot be accepted by Muslims.

Muammar Qaddafi exploits the idea of contradiction in the Hadith to reject the entire Sunnah. He claims that Ali bin Abi Talib (RA) was told by the Messenger of Allah (SAW) that he (RA) would be one of the people of Paradise.

He also uses another Hadith that says that if two Muslims meet each other with swords drawn, then both of them are in fire. Since Ali (RA) met Mu'awiyyah in battle, Qaddafi argues, this Hadith would apply to Ali (RA) and thereby contradict the glad tidings given to Ali (RA) about being from the people of the Paradise. Based on this supposed contradiction, Qaddafi rejected the entire Sunnah.

In fact, Qaddafi took this second Hadith out of context. The second Hadith is talking about two groups fighting out of Fitnah or Kufr, such as fighting for the sake of nationalism. While, Ali (RA) was fighting for Islam. The Qur'an tells us that if two groups are fighting, then make peace between them, and if one group continues to overstep the bounds, then it orders all parties to band together to deal with the rebel group.

Since Ali (RA) was the legitimate Khaleefah and Mu'awiyyah (RA) rebelled, Ali (RA) negotiated with Mu'awiyyah (RA) and then fought him to stop the rebellion. Ali (RA) was acting on a Hukm Sharii and this cannot be viewed by anyone as an act that put Ali (RA) in the fire.

Consequently, there is absolutely no contradiction in these two Ahadith. There is no contradiction or conflict between any two Hadith except in cases of abrogation, in which the ruling from the latest Hadith is taken.

CHAPTER 5.0

RELATIONSHIP BETWEEN QUR'AN AND SUNNAH

Allah (SWT) says in the Qur'an:

"He who obeys the Messenger has obeyed Allah." (TMQ An-Nisa: 80)

"And no, by thy Lord, they would never believe until they refer to you in the issues and disputes that are between them" (TMQ An-Nisa: 65)

"He does not speak of his own desires and whims, indeed he is inspired by Wahiy (revelation)." (TMQ An-Najm: 3)

"What the Messenger has given you then take it, and what he prohibits then abstain from it." (Al-Hashr: 7)

"And we have revealed to you (O Muhammed) the Dhikr, for you to explain it to the people." (TMQ An-Nahl: 44)

"Say (O Muhammed): If you love Allah then follow me, and Allah will love you." (TMQ AL-Imran: 31)

The Messenger of Allah (SAW) said,

"One of you who while reclining on his chair is quoted a Hadith from me, and he says to the person who quoted the Hadith, "we have the Book of Allah (Qur'an), so what we find in it from what is Halal we will take it as Halal, and what we find in it that is Haram, we'll treat as Haram." (The Prophet (SAW) continued...) But whatever the Messenger of Allah has made Haram, it is like that thing which Allah has made Haram."

"One of you who while reclining says, "This is the book of Allah (Qur'an), what is in it from that which is Halal, we will use it as Halal, and what is in it from the haram, we will take as Haram". But whoever delivers from me a Hadith and he lies in it, he has told a lie on Allah and His Messenger...." (Both of the above mentioned Ahadith are reported in many sayings by Abu Daoud, Ahmad and many others.)

These Ayah and Hadith establish without any doubt that both the Qur'an and the Sunnah are from Allah (SWT) and consequently both are sources for legislation. The Sunnah is a very fundamental element in Islam and knowing the Sunnah is a prerequisite for understanding and applying the Qur'an.

5.1 THE APPLICATION OF SUNNAH

The Sunnah can be applied in five ways:

A. Sunnah can explain a word which is not explained in the Qur'an

For example, the Qur'an says, **"Establish the Salat" (TMQ Al-Baqarah: 43)**

The Qur'an does not explain or provide any details regarding the term, "Establish the Salah." However, the Sunnah explains the details pertaining to the term "Establish the Salat." The Messenger of Allah (SAW) says:

"Pray as you see me pray"

The Messenger (SAW) used to observe people pray and would correct them in the areas of the Salat where they made mistakes. The issue of explanation and clarification also extends to the rules of Hajj, Zakah, Jihad, and others. In summary, the Qur'an may mention a term without providing any details, but Sunnah plays the role of explaining these terms.

B. Qur'an mentions a general term which could be applied to any person, while the Sunnah further specifies the term and forms another rule.

For example, the Qur'an says:

"The man and woman who commit Zinaa, flog each of them with one hundred lashes." (TMQ An-Nur: 2)

This rule can be applied to any male or female who is found guilty of Zinaa. However, the Messenger (SAW) stoned married men and women who committed Zinaa. Thus, in this case, he (SAW) singled out the married man and woman and gave them the rule of stoning to death for Zinaa.

C. A rule may be mentioned in the Qur'an without any restrictions, but the Sunnah places restrictions on the rule.

For example, the Qur'an says:

"The male and female thief, cut their hands" (TMQ Al-Ma'ida: 38)

There is no restriction placed on this rule in the Ayah which simply states that anyone found guilty of stealing should have his hand cut. However, the Sunnah places certain restrictions on the application of this punishment. Some of which are that the stolen property must equal a Nisab, which amounts to one quarter of a Dinar in gold. Also, the property / wealth must be stolen from a place where such property / wealth is usually kept.

It has to be kept under average protection which is relevant to the people and the property itself. For example, if the jewelry is left in the open instead of a locked up place, then the one who steals it will not have his hand cut off, even though the action is still Haram. Another example is if the sheep or horses are not kept in a barn or stable, then stealing will not call for the implementation of the Hadd, even though stealing them is Haram.

D. An original rule in the Qur'an which is explained, has no restrictions nor exceptions, but the Sunnah adds new items to the original rule.

For example, the Qur'an says:

"Forbidden to you are your mothers, daughters, paternal and maternal aunts, nieces, foster mothers and sisters, mothers-in-law, and step daughter...." (TMQ An-Nisaa: 23)

The Sunnah added that:

"No woman can be married to a man who is already married to her sister or her maternal / paternal aunt."(Muslim & Bukhari).

Men are also prohibited from marrying the women who breast-fed them. Thus, the Sunnah adds extra items to the Qur'anic rule.

E. A rule originating from the Sunnah and not the Qur'an.

For example the Messenger (SAW) said:

"People share in 3 things. The water, the graze (kala), and the fire (includes power resources)." (Abu Daoud).

This Hadith established rules related to public ownership of the natural resources in the Islamic State. The topic of public ownership in the State was never explicitly addressed in the Qur'an.

CHAPTER 6.0

SOURCES OF HUKM SHARII

As defined earlier, Hukm Sharii are the rulings of Allah (SWT) addressing our actions. These rulings are derived from certain sources. The sources which are used to extract rulings have to be based on Adilla Qataiya (Decisive evidences).

As an example, to have Ijma as Sahabah (Consensus of the Companions) as a source to extract laws, the concept of Ijma as Sahabah must be based upon Qatai Daleel. Thus, even though not all the laws extracted from Ijma as Sahabah have to be Qatai, the concept itself must be.

The four sources of Hukm Sharii, Qur'an, Sunnah, Ijma as Sahabah and Qiyas will be discussed respectively. These sources are agreed upon by the majority of the scholars. This will be followed by a brief summary of the disputed sources.

6.1 QUR'AN

Muslims follow Prophet Muhammed (SAW) based on his Prophethood. The belief in the Prophethood means following the Message which the Prophet (SAW) brings. Using Qur'an to extract rulings indicates adherence to the Message. There are many Ayah in the Qur'an which state that the Qur'an is a source of ruling, guidance and knowledge.

"We have sent down to you the book of truth, that you may rule between men, as guided by Allah, so be not (used) as an advocate by those who betray their trust." (TMQ An-Nisa: 105)

6.2 SUNNAH

The Qur'an explicitly states that Sunnah is a source for Hukm Sharii.

"It is not for any believing man or woman, when Allah and His Messenger have decided a matter, to have any choice for themselves in their affairs. For whoever rebels against Allah and His Messenger has gone astray into manifest error." (TMQ Al-Ahzab: 36)

"Whatever the Messenger gives you, take it and whatever he forbids you of, abstain from it...." (TMQ Al-Hashr: 36)

Furthermore, there are many Ahadith which state that it is obligatory for us to follow the Prophet (SAW) as a source for rulings.

Abdul **-** Aziz reported from Amr bin Amr **-** the freed slave of Al Mutallib bin Hantab that the Messenger of Allah (SAW) said:

"I have left nothing concerning which Allah has given you an order without giving you that order; nor have I left anything concerning that which He has prohibited without giving you that prohibition." (Imam Shafii's Kitab Ul-Um).

Thus, Sunnah is a legislative source along with the Qur'an, and the Qur'an cannot be understood without the application of Sunnah.

6.3 IJMA

Ijma is the verbal noun of the Arabic word Ajmaa, which has two meanings: 1) to determine 2) to agree upon something. There are many types of Ijma discussed in the books of Usul al Fiqh. Some of these being, *Ijma al Ummah, Ijma al Mujtahideen, Ijma ahlel Bayet, Ijma al Madinah and Ijma as Sahabah.*

6.3.1 IJMA AL UMMAH

In the past and present, some Ulema have taken Ijma al Ummah as a legislative source and it has been defined as the agreement of the Ummah of Muhammed (SAW) on a matter at anytime, past, present, or future. The one Ayah which is most frequently quoted in support of Ijma al Ummah is in Surah al-Nisa: 115.

"And anyone who splits off from the Messenger after the guidance has become clear to him and follows a way other than the believers, we shall leave him in the path he has chosen and land him in hell - what an evil refuge." (TMQ An-Nisaa: 115)

Some of the Ulema observe that "the way of the believers" in this Ayah refers to their agreement and the way that they have chosen, in other words, their Ijma. Adherence to the way of the community is thus binding and departure from it is forbidden. Others have stated that even if the Ayah constitutes an irrefutable proof, it does not have a Qatai (conclusive) meaning.

Secondly, this Ayah refers to the Oneness of Allah and the Prophethood of Muhammed (SAW). And **"Following a path other than that of the believers,"** means abandoning Islam. The Ayah was revealed on the occasion of a Muslim who turned away from Islam. Thus, the Ayah is not general. Due to these points, utilising this Ayah as a Daleel for Ijma al Ummah is invalid.

The Ahadith which are most frequently quoted in support of Ijma al Ummah are:

1. *"My Ummah shall never agree on a Dalalah."* (Ibn Maja)

2. *"My Ummah shall never agree upon al Khata (mistake)."*

3. *"Allah will not let my Ummah agree upon Dalalah (astray)"*(Ibn Maja)

4. *"I beseeched Allah Almighty not to bring my Ummah to the point of agreeing on Dalalah (astray) and He granted me this."*(Ibn Maja)

5. *"A group of my Ummah shall continue to remain on the right path. They will be the dominant force and will not be harmed by the opposition of dissenters."*(Ibn Maja)

A source for legislative rulings has to be based on a Qatai Daleel. These Ahadith are Adilla Thanniya (Conjectural evidences). Secondly, these Ahadith cover different topics, first of which is that the Ummah does not agree upon Dalalah, which means returning back from Islam. In fact, these Ahadith justify that the Muslim Ummah, as a whole, will not revert to Kufr. Furthermore, the Ahadith which mention "Khata" (mistake) are weak Ahadith.

Also, if the above mentioned Hadith are taken as a source to justify the honesty of the Ummah as a whole, these Hadith contradict other Hadith in which the Prophet (SAW) criticised future generations. As an example, Umran ibnu Haydh reported the Prophet (SAW) as saying:

"The best of my Ummah are those who lived in my lifetime then those who lived after them and those who lived after them. Then will come a time when people will fabricate stories or tale without evidence and will cheat and not be trustworthy nor be faithful and they will appear obese."

This is reported in many forms by many scholars such as Bukhari and Ahmad Bin Hanbal. In another saying, the Prophet (SAW) said:

"Lying will become a common practice, the believer will be called unbeliever and some people will give false testimonies and will testify before being asked and some people will become like wolves." (Tirmidi, Ibn Maja and Ahmad)

All these sayings contradict the previous sayings if they are taken to prove Ijma al Ummah, because Ijma al Ummah assumes that the Ummah will always agree on good, whereas, these Ahadith indicate that some parts of the Ummah will go astray. There cannot be contradiction in the revelation. Thus, Ijma al Ummah can have no value as a source for Hukm Sharii.

6.3.2 IJMA AL MUJTAHIDEEN

Ijma al Mujtahideen is defined as a unanimous agreement of the Mujtahideen (those who exert their efforts to extract the ahkam (rules)) of the Muslim community of any period following the death of the Prophet (SAW). The proponents of Ijma al Mujtahideen have used the same Daleel which is used for Ijma al Ummah. Thus the same arguments would apply to Ijma al Mujtahideen.

6.3.3 IJMA AHLEL BAYT

Some Ulema have confined Ijma to the household of Prophet Muhammed (SAW). In support of their argument, they refer to the following evidence:

"O Wives of the Prophet (SAW)... Allah wishes to cleanse the people of the House (of Prophet (SAW)) of impurities (al-Rijis)" (TMQ Al-Ahzab: 32-33)

The proponents of this type of Ijma have said that when this Ayah was revealed the Messenger (SAW) took his cloak and covered Imam Ali (RA), Hussein, Hasan and Fatimah (May Allah be pleased with them) and said:

"These are my House"

Also, the Ulema have backed their argument from the Sunnah with this saying of the Prophet (SAW).

"I am leaving amongst you two valuable things (al-thaqalayn), the book of Allah and my (Utra) family. If you abided by them you will never go astray. In another narration, Fear Allah when dealing with my family (repeated three times)."(Tirmidi & Ahmad).

Thus, the claim is made that Allah (SWT) has lifted ar-Rijis from the family of the Prophet (SAW) and that ar-Rijis means mistake. According to their argument, Ahlel Bayt are infallible, and thus, their Ijma is a legitimate source of Shariah.

In response to the Ayah in Surah al-Ahzab, the meaning is not Qatai (decisive). Also, this Ayah was revealed in regards to the wives of the Prophet (SAW) as well. It is not exclusive to Fatima (RA), Ali (RA) and their sons (RA). Does this mean that all his (SAW) wives were infallible?

Based on this argument, they should be? Also, the word "ar-Rijis" mentioned in the Ayah means the lifting of suspicion or dishonesty and not mistake. The word Rijis has been mentioned in many Ayahs under the meaning of moral impurities such as:

"Thus Allah lays rijis (shame) upon those who believe not." (TMQ Al-Anam: 125)

"It is not for any soul to believe except by the permission of Allah. He has set Rijis (uncleanness) upon those who have no sense". (TMQ Yusuf: 100)

Rijis, in these and many other places in the Qur'anic text, denotes moral impurities. Removing the Rijis does not in any way mean that they are infallible.

As for the Hadith, which narrated that the Prophet (SAW) covered, with his (SAW) cloak, Imam Ali, Fatimah, Hussain and Hasan (RA), and then said, these are my family, it is by no means an indication that Ahlel Bayt is solely limited to them. The word family in the Ayah in Surah Ahzab means the wives of the prophet (SAW) as well.

This has been backed by a Hadith of Al-Thaqalayn narrated by Zaid Bin Arqam. For clarification of this Hadith, *Hussein (RA) said to Zaid (RA) "O Zaid who are his (SAW) family? Are they not his (SAW) wives?"*

He said, "Yes his (SAW) wives are his (SAW) family, but his (SAW) family are those who have been excluded from accepting Sadaqah (charity)"

So he inquired, "Who are they?" - *Zaid said, "they are the family of Ali, the family of Aqil, the family of Jaafer". Hussain then asked, "have all these people been excluded from accepting Sadaqah?" And he replied, "Yes".*

All of this confirms that the mentioned Ayah cannot be taken as an evidence that the consensus of ahlel bayt and their infallibility is justified. This means that Ahlel Bayt is not restricted to Fatima, Ali (RA) and their sons only (may Allah (SWT) be pleased with all of them).

6.3.4 IJMA AHLEL MEDINAH

The Ulema who subscribe to this type of Ijma have restricted it to the people of Medinah. They base their opinion on the Hadith of the Prophet (SAW):

"The Medinah city cleanses all filth (Khabath). (Bukhari & Muslim)

The Ulema also claim that Khabath means mistakes and in this case the Hadith would also indicate that its people are free from mistakes. Since the people are free from mistakes, it follows that their Ijma is considered valid.

The complete text of the Hadith is mentioned in Bukhari and Muslim. It relates that a bedouin gave the pledge of Islam to the Prophet (SAW), he then became sick and said: O Prophet (SAW), free me from the allegiance I gave to you. The Prophet (SAW) rejected. The man then asked again and the Prophet (SAW) again rejected, so he left the Prophet (SAW) and became well. The Prophet (SAW) said:

"The city of Medinah is like the bellows (an instrument used by a blacksmith for blowing air into the fire to make the fire burn quickly). It cleanses its filth (Khabath) and its goodness will shine". (Bukhari, Muslim & Ahmad Bin Banbal)

Any mistake in Ijtihad cannot be considered as Khabath (filth) because there is no reward in this.

Khabath (filth) has been forbidden by the Prophet (SAW). In the following sayings of the Prophet (SAW):

"The price (money obtained from selling) of a dog is Khabaith (filth)"(Muslim)

"The dowry (money taken for Zina) of a whore or prostitute is Khabaith (filthy)"(Bukhari & Muslim)

"Alcohol is the mother of all Khabaith (filth)" (An Nisai)

However, the Mujtahid would be rewarded even if he erred and made an error. For the Prophet (SAW) said

"My Ummah is not responsible for three things: mistakes, forgetfulness, and whatever is done under duress." (Ibn Maja)

So, Khabath cannot be considered as an error and Ijma ahlel Medinah cannot be taken as infallible. Furthermore, the Hadith used to justify Ijma ahlel Medinah is not Qatai.

6.3.5 IJMA AS SAHABAH

If the Sahabah (RA) after the death of the Prophet (SAW) were to agree unanimously upon a solution to a problem without any dissent amongst each other, in the absence of a ruling from the Qur'an and Sunnah, then this agreement is considered to be a Daleel. This agreement must have been based upon some teaching of Mohammed (SAW) of which they all knew, but which did not reach us directly in the form of Hadith. Therefore, Ijma as Sahabah is an indication of Sunnah itself.

An example of Ijma as Sahabah is the priority which must be given to the appointment of a Khaleefah for Muslims. The Sunnah of the Prophet (SAW) informs us that the dead must be buried quickly and it is forbidden for those responsible for the burial to delay the burial on account of other things. Yet when the Prophet (SAW) died, the Companions delayed his (SAW) burial until they had selected a Khaleefah from among themselves.

Before the burial arrangements were completed, the Sahabah (RA) had gathered in the place of Banu Saida and proceeded to select the Khaleefah. After discussion of the matter, all agreed to give Bay'a (oath of allegiance) to Abu Bakr (RA), after which they buried the Prophet (SAW). None of them objected to the delay of the burial. The unanimous agreement of the Sahabah (RA) regarding this action is a Daleel for us about the importance of appointing the Khaleefah for Muslims, even more vital than the burial of the Prophet (SAW) himself.

Daleel Indicating the Authority of Ijma as Sahabah

The Sahabah (RA) were the group who had the best access to the revelation and were most mindful of holding fast to the revelation in their actions. Their Ijma is a proof for the following two reasons: First, Allah (SWT) in the following Ayah praises them as a community, not just as individuals.

"The Vanguard (of Islam) - the first of those who forsook (their homes) and those who gave them aid (the Muhajireen and the Ansar) and also those who follow them in good deeds, Allah is well pleased with them and they with Allah. And Allah has made ready with them gardens underneath which rivers flow and that will be their abode forever eternally, this their supreme triumph/" (TMQ At-Taubah: 100)

This compliment is given to the Sahabah (Muhajireen & Ansar) for the sole reason of having been the Sahabah (RA). However, the compliment for others is due to the fact that they followed the footsteps of the Sahabah (RA). This means that the original compliment is for the Sahabah (RA). The followers are not complemented but for following the Sahabah (RA).

Therefore, it can be concluded that the meaning of the Ayah is confined to the Sahabah (RA) only. Any group of people whom Allah (SWT) complements in such a manner, the truthfulness of what they agree on is affirmed.

Second, doubt in their trust-worthiness leads to doubt in Islam. The Sahabah (RA) were the generation that transmitted the Qur'an and narrated the Hadith. Our entire Deen has been conveyed to us through the vehicle of this group. This group was the means by which Allah (SWT) chose the Qur'an to be compiled and preserved. Allah (SWT) has promised to preserve this scripture through them. Allah (SWT) says:

"Falsehood cannot come at it (Qur'an) from before it or from behind it. It is a revelation from the Wise, the Owner of Praise>" (TMQ Fussilat: 42)

The important point to remember is that Ijma as Sahabah is not the personal opinions of the Sahabah (RA) on any technical issue. Rather, it is their agreement on specific things with regard to its rule in Islam, ie an agreement on a Sharii opinion.

The Sahabah (RA) would not agree that a certain thing is Islamically permitted or forbidden without knowing whether that action was approved or disapproved by the prophet (SAW). However, the Hadith in this regard is not narrated to us, instead its rule is conveyed by the total agreement of the Sahabah (RA). The Ulema are in agreement that Ijma as Sahabah is a binding proof.

Who is the Sahabi?

There are two definitions of the Sahabi:

1. A Muslim who saw the Prophet (SAW)
2. A Muslim who lived with the Prophet (SAW) for one or two years or participated in one or two ghazwaat (military expeditions led by the Prophet (SAW))

The latter definition was reported by Saed bin Musayeb (RA) and is stronger.

6.4 QIYAS

The linguistic meaning of Qiyas is measurement. As a juristic term Qiyas is the extension of a Sharii ruling from an original case to a new case because of

the equivalence of the causes underlying them (Illa). Example of Qiyas:

"O you who have attained faith! When the call to prayer is sounded on the day of congregation(Friday), hasten to the remembrance of Allah, and leave all worldly commerce: this is for your own good, if you but knew it. And when the prayer is ended, disperse freely on Earth and seek to obtain Allah's bounty; but remember Allah often, so that you might attain to a happy state!" (TMQ al-Jummah: 9-10)

The Ayah mentions that, when the call to prayer is given, one should disengage from all worldly commerce. The Ayah doesn't mention to stop such acts as eating, resting, or anything else other than conducting business. The Ayah mentions that when the prayer is over, disperse and seek Allah's bounty. This means that there is a reason to leave the commerce, being that if we do not, then we will be preoccupied and will forget the prayer.

The application of Qiyas for this example would be for any other activity besides commerce. This is because the Illah (missing the Jummah prayer) occurs due to these activities as well. Therefore, working, playing, eating etc are prohibited in the time of Juma'a because all of these activities prevent Muslims from performing the Juma'a prayer.

Daleel indicating the authority of Qiyas

The Daleel is the Qur'an and Sunnah because Qiyas is being done on the basis of a Ayah or Hadith. When a text mentions a reason for a rule, extending this rule to any other issue having the same reason is considered another application for the text of the Ayah or Hadith.

There are specific guidelines and requirements for Qiyas explained in the books of Usul al Fiqh. One such guideline is that there should be no existing ruling from the Qur'an, Sunnah and Ijma as Sahabah for the new case

Example.

> **Does a woman have to remove the nail polish before performing Wudhu?** Some people claim she does not have to remove the nail polish in order to do Wudhu, and they justify it by doing Qiyas on the performance off Mas-ah (wiping over the socks).
>
> Qiyas cannot be performed in this situation because the Ayah regarding Wudhu explicitly orders to wash all parts of the hands, and polish prevents water from reaching the nails. In the case of Masah (wiping over the socks) the text is not presented with an Illa (legal reason) and cannot be extended to other things. Thus, Qiyas can be practiced in this issue.

Some of the other requirements for Qiyas are that the original ruling has to be from Qur'an, Sunnah and Ijma as Sahabah, not from another Qiyas. In addition, the texts of the Qur'an Sunnah and Ijma as Sahabah must contain the justification for the ruling. We cannot use our Aql (intellect) to come up with the cause (Illa).

CHAPTER 7.0

SOURCES OF HUKM SHARII
NOT AGREED UPON BY ALL THE ULEMA

7.1 ISTIHSAN

Istihsan literally means to approve or to do something preferable. It is a derivation of Hasuna which means being good or beautiful. As a juristic term, Istihsan is defined as shifting from one Qiyas to another Qiyas due to a reason or suspending a Qiyas for a reason. A Mujtahid may take into consideration any of these options.

7.1.1 TYPES OF ISTIHSAN:

A. Istihsan by Qiyas- switching from a ruling of Qiyas to another ruling by Qiyas due to a stronger reason.

Example:

Imagine that Ahmad and Muhammed equally own a car. They sell their car to a friend, Ali for $1000. Ali pays Muhammed $400 as a first payment. However, before Muhammed could pay Ahmad his share, the money gets stolen. The ruling from Qiyas in this situation is that both Ahmad and Muhammed have to equally share the loss since they are partners.

The ruling from Istihsan by Qiyas is that Muhammed should incur the loss and not Ahmad. The reason is that Muhammed has the option initially to tell Ali to pay Ahmad by himself. Thus, there is an assumption that Muhammed used this privilege of collecting Ahmad's share of the payment even though he had the option not to.

B. Istihsan by necessity - shifting to another Qiyas due to necessity.

Example:

There is a service offered by a business such as a dry cleaning store, which is a public service, and another service offered by an employee who is hired exclusively by someone for a private service such as a computer operator. Both parties are not liable for any unintentional damages, and this is a ruling from Qiyas. The ruling from Istihsan due to necessity is that the dry cleaning store should be liable since it is a public service but not the computer operator since he is a private employee. The necessity is that if the business is not liable then the employee hired for the public service may overload himself by taking up other jobs and may not be able to handle the responsibility.

C. Istihsan by Sunnah - Canceling the Qiyas due to a contradiction caused by the Hadith.

Example:

The Prophet (SAW) said who has Khuzaima as his witness it is enough for him, meaning that the testimony of that person (Khuzaima) equals the testimony of two people. While the ruling from Qiyas is to have two witnesses, the Qiyas is canceled because this was a special situation for Khuzaima by the Prophet (SAW).

D. Istihsan by Ijma as Sahabah - Canceling a ruling from Qiyas due to a contradiction caused by the Ijma as Sahabah.

Example:

Paying a company to manufacture items such as chairs. The ruling from Qiyas is that it is not allowed because the items under discussion (eg chairs) are not present at the time of the contract. But the ruling from Qiyas is canceled du to the Ijma as Sahabah.

The first two types of Istihsan have no valid Daleel for their application. Technically, the third and fourth are not Istihsan; rather, they are ruling based on a Daleel from Sunnah and Ijma as Sahabah.

The proponents of Istihsan use the following Ayah to validate Istihsan:

"... And give glad tidings to those of My servants who listen to the word and follow the best of it. Those are the ones that Allah has guided and endowed with understanding." (TMQ al-Zumar: 18)

"And follow the best of what has been sent down to you from your Lord." (TMQ al-Zumar: 55)

These Ayahs do not authorise the use of Istihsan. Rather, the Ayah instruct us to follow the best statements which were revealed, Qur'an. This is because the second part of the Ayah describes those who do as the ones that Allah (SWT) has guided.

Imam Shafii used to say "Those who practice Istihsan are the Sharii (legislator), and if istihsan is allowed in this Deen then it should be allowed for any intellectual person to initiate laws for himself." (Al-Risalla)

7.2 MASLAHA AL MURSALAH

Literally, Maslaha means benefit or interest. As a juristic term Maslaha Mursalah refers to accepting public interest in the absence of ruling regarding an issue from the Qur'an or Sunnah.

7.2.1 TYPES OF MASLAHA AL MURSALAH

A. Maslaha canceled by the text - Maslaha (interest) which is canceled due to a ruling from the text. All agree that this kind of Maslaha is invalid.

Example:

One of the Khaleefahs had marital relations with his wife during the daytime in Ramadhan. One of the Ulema advised the Khaleefah to fast two consecutive months as Kaffara. Another Alim asked this Alim how he issued this ruling when the Khaleefah first must free one slave, and if he could not, then feed 60 people, and, if he cannot, then he should fast two consecutive months.

The Alim answered, that if he had ordered the first two punishments, then it would have been easy for the Khaleefah and he might have don the same act again. This form of Maslaha is invalid because a ruling on the issue already exists from Sunnah. The ruling is that **If a person breaks his fast in Ramadhan by having sexual intercourse with his wife, then he has to free a slave. If he can't, then feed 60 people,. If he can't, then fast 60 days.** This is based on a Hadith reported by Bukhari, Muslim, Ibn Maja & Abu Daoud. This order cannot be changed.

B. Maslaha approved by the Shariah - Benefit which the Shariah does not forbid. As an example, allowing people to trade. This trade is the interest of the people and Qur'an allowed us to conduct trade. All agree that this type is valid.

C. Adopting Maslaha (benefit) in an action fro which there is no ruling from Qur'an and Sunnah.

For example compiling the Qur'an or canceling the Hudd for stealing during famine.

There is no debate amongst the Ulema on the first two types of Maslaha al Mursalah. But there is disagreement regarding the third type of Maslaha. Some have accepted it within specific requirements while others have rejected it outright.

The Ulema who have accepted Maslaha al Mursalah give the following justifications:

A. Shariah, in general, came to satisfy the interests of the people in the correct manner.

B. Sahabah (RA) agreed through Maslaha (interest) to compile the Qur'an without having evidence either in the Qur'an or in the Sunnah to do so. This is among the many examples claiming that the Sahabah (RA) compiled the Qur'an due to its benefit but without a Daleel.

Regarding the first justification, it is true that the Shariah in general came for the interest of the Ummah, but we cannot use this argument as an Illa (cause) to justify every ruling. All the rulings from Qur'an, Sunnah, Ijma as Sahabah and Qiyas are there to satisfy our needs. In addition, a Muslim obeys and implements the rules as obedience to Allah (SWT) and not because the rulings are easy, hard or connected with Maslaha (benefit). So we cannot use the benefit as a justification to legalise any action. There has to be an evidence allowing such an action.

Regarding the second justification: By investigating all of these examples it will become obvious that the Sahabah (RA) understood the evidences thoroughly. The rules of Usul al Fiqh were not written at the time. The Sahabah (RA) used to extract rulings because of their ability to understand both the language and text. We do not observe any actions by them which did not have grounds from the text.

Regarding the compilation of the Qur'an, it was not done because of Maslaha. The Sahabah (RA) understood that they had to do something to preserve the Qur'an and this is in compliance with the Ayah:

"Lo! We revealed the Reminder, and Lo! We verily are its Guardian." (TMQ Al-Hajr: 9)

In addition to the Ayah there is a Hadith asking Muslims to remove any harm or to avoid causing any harm.

"There is no Harm or Harming" (Bukhari & Muslim), meaning that harm is not allowed.

What can be a bigger harm than losing the Qur'an itself? What Uthman (RA) did by burning different copies of the Qur'an and maintaining only one copy fits under the command of the above mentioned Ayah and Hadith.

Regarding Umar's (RA) canceling the Hudd for cutting the hand during famine, it is in agreement with the requirement for cutting a person's hand for stealing. One of the requirements is that if the crime of theft happens during the famine, then the Hudd is lifted. So, Umar (RA) simply implemented the requirement. The Prophet (SAW) said,

"no cutting in famine"

Also, the Prophet (SAW) instructed us not to apply the Hudd in case of doubt. Above all, from the definition of Hukm Sharii, we should realise that it is the address of the Sharii, Allah (SWT). Furthermore, it is well established from the Qur'an that Allah (SWT) has perfected our Deen and chosen Islam as that Deen. This indicates that the Shariah is perfect. The concept of Maslaha, however, implies that there are some issues without rulings from Islam, and to fill this vacuum, we have to apply public interest. This concept is not correct and therefore, this type of Maslaha is invalid.

7.3 LAWS REVEALED BEFORE ISLAM

All Shariah (rulings) and Messages of different Prophets (AS) came from one source, Allah (SWT). The different Prophet (AS) conveyed the same basic Message: Belief in the Oneness of Allah and the need for guidance to regulate human conduct. In fact, each Prophet (AS) instructed his followers to believe in Prophet Muhammed (SAW) if they were to live till his (SAW) time.

This is not to say that there is no difference between them. Each of the revealed Messages were addressed to different nations at different points in time. They each have their distinctive features, which set them apart from the rest. This is evident by different Messages having different rulings.

"For those who followed the Jewish Law, We forbade Every (animal) with undivided hoof. And we forbade them the fat of the ox and the sheep, except what adheres to their backs or their entrails or is mixed up with a bone" (TMQ Al-An'am: 146)

"We ordained therein for them, Life for life, eye for eye, nose for nose, ear for ear, tooth for tooth and wounds equal for equal." (TMQ Al-Maida: 45)

The rule to be stated here is that the Shariah that were revealed before Islam are not applicable to the Muslims.

Allah (SWT) says:

"To you we sent scripture in truth abrogating (Musadiqun) the scripture that came before it..." (TMQ Al-Maida: 48)

The Ulema are in agreement that the Shariah of previous Messages are not to be sought. The Shariah of Islam is the exclusive source of all laws for Muslims.

Allah (SWT) says:

"For everyone one of you we have ordained a divine law and a methodology." (TMQ al-Maid'a: 48)

Furthermore, it is well known that the Prophet (SAW) did not resort to either the Bible or the Torah at any time. Once, the Prophet (SAW) saw Umar (RA) reading from the Torah and he (SAW) stopped him.

Some people argue that taking a ruling position in Kufr systems is allowed based on the life of Yusuf (AS). This is not allowed because these incidents were before the revelation of Islam and contradicts what our Prophet (SAW) did in Mecca.

Thus, it should be clear to us that, as Muslims, we follow only the Shariah brought to us by Muhammed (SAW).

CHAPTER 8.0

IJTIHAD

Ijtihad is derived from the root word Jahada. Linguistically, it means striving or self exertion in any activity which entails a measure of hardship. As a juristic term, Ijtihad means exhausting all of one's efforts in studying a problem thoroughly and seeking a solution for it from the sources of Shariah.

A person who performs Ijtihad is a Mujtahid; whereas, a person who knows the rules of Shariah in detail, but is unable to extract the rules directly from their sources, is not a Mujtahid but rather a Faqih, Mufti or a Qadi.

The text of the Qur'an and Sunnah which are Qatai (conclusive) in meaning provide only one understanding. Any Ijtihad on these types of text will render only one meaning. The texts related to issues such as Riba or murder are clear in their prohibition of these things. No Mujtahid can claim that Riba or murder is allowed because the text only offers one meaning.

The issues related to the Aqeedah are based on Adilla Qataiya (decisive evidences) and there is only one correct understanding for it, not several. Thus, no Mujtahid can deduce another Aqeedah of Islam. There is only one correct view in regards to these matters and anyone who differs from it is a Kafir.

8.1 QUALIFICATIONS FOR PERFORMING IJTIHAD

A. The Mujtahid must be a Muslim male or female of sound mind who has attained a high level of intellectual incompetence.

B. Since the text of the Qur'an and Sunnah were revealed in the Arabic language, Ijtihad can only be performed based on the Arabic text. One must have knowledge of the Arabic language to the extent that it enables a correct understanding of the Qur'an and the Sunnah. A complete command in Arabic is not a requirement for some kinds of Mujtahideen, but the Mujtahid must, at least, know the fine points of the language related to the subject at hand. He must also be able to comprehend the sources accurately and deduce the rule from them.

C. The Mujtahid also needs to be knowledgeable of the Qur'an, the Makki and Madini contents of the Qur'an, the occasion of their revelation (Asbab al Nuzul) and must have a full grasp of the legal contents of the Qur'an, but not necessarily of the narratives and parables of the Qur'an and its passages relating to the Hereafter. The knowledge of the Ayat ul Ahkam (verses regarding rules) includes knowledge of the related commentaries (Tafsir) with special reference to the Sunnah and the views of the Sahabah (RA) related to the subject at hand.

D. The Mujtahid must possess an adequate knowledge of the Sunnah, especially the part relating to his Ijtihad and be familiar with the rulings in the Sunnah. The Mujtahid must also know the incidents of abrogation in the Sunnah and the reliability of the narrators of Hadith.

E. He must have knowledge of Usul al Fiqh so that he will be acquainted with the procedures for extracting the rulings from the text and the implications.

F. The Mujtahid should be aware of the opinions of different Mujtahideen, if any exists. It is essential for a Mujtahid to be familiar with the Daleels of other Mujtahideen, on a particular issue as how the other Mujtahid understood the Daleel and the issue.

G. Finally, he must have a comprehensive knowledge of the issue on which Ijtihad is being performed. To extract any ruling one has to understand the subject thoroughly. If the Mujtahid does not understand an issue, he is not allowed to do Ijtihad regardless of where he lives. To understand the issue, the Mujtahid can go to experts. For instance, there might be an issue in genetic engineering. To understand the process of genetic engineering, the Mujtahid can go to an expert in this field

Therefore, these criteria are enough to qualify one to do Ijtihad, and it is incorrect to say that each issue requires the Mujtahid to reside in that environment. The Mujtahid can reside anywhere and do Ijtihad as long as he is familiar with the issue being dealt with. If the Mujtahid is not familiar with the issue, he is not allowed to do Ijtihad, even if the issue occurs in the same environment that the Mujtahid is residing in.

8.2 TYPES OF MUJTAHID

A. Mujtahid Mutlaq (Absolute Mujtahid)

Founders of various schools of Islamic Fiqh such as Abu Hanifah, Shafii, Ahmad bin Hanbal, Malik, Jafar and others are considered Mujtahid Mutlaq. These Mujtahideen set up their own Usul al Fiqh to extract the Ahkam (rules) and are not restricted by others.

B. Mujtahid within a Madhab

These Mujtahideen follow the Usul al Fiqh set up by the Mujtahid Mutlaq to extract the ahkam (rules); eg Imam Abu Yusuf adhered to Imam Abu Hanifah's methodology.

These Mujtahideen, within a Madhab, generally followed the guidelines of their respective schools to extract rulings. Nevertheless, they did not consider themselves bound to follow their Imams in the implementation of particular issues. This is borne out by the fact that they have held opinions that were opposed to those of their leading Imams. As a matter of fact, some Mujtahideen such as Imam Abu Yusuf reached to the level of Mujtahid Mutlaq, but didn't form his own Madhab out of respect for Imam Abu Hanifah.

C. Mujtahid in particular issues only

This Mujtahid would be able to handle one single issue while he may be unable to handle another. In other words, the Mujtahid would be able to study the opinion of other jurists and trace their Adilla (evidences) but may be unable to establish new opinions for new issues.

8.3 REASONS FOR DIFFERENCES OF OPINION AMONG THE MUJTAHIDEEN

The word Madhab means "school of Fiqh". The following are some of the reasons for the existence of Madhahib (schools of Fiqh).

8.3.1 DIFFERENCES IN THE LEGISLATIVE SOURCES

Criteria in evaluating the Sunnah

One Mujtahid may consider a certain Hadith authentic while others may not. This is due to their differences in the criteria for judging the authenticity of the Hadith.

Example:

Ahadith regarding paying Zakah on women's jewelry states that a woman came to the Prophet (SAW) with her daughter and was wearing two bracelets on her hand. The Prophet (SAW) asked her whether she paid Zakah on the jewelry. She replied no. The Prophet (SAW) told her, that would you like it if Allah (SWT) puts bracelets of fire in your hand. This Hadith was reported by Amr bin Shuaib.

Some scholars consider this to be an authentic Hadith, while others consider it a weak Hadith due to the weakness in the Isnad. The individuals who said that there is no Zakah on jewelry are Aisha, Imam Jabir, Ibn Umar, Imam Malik, Imam Ahmad and Imam Shafii.

Furthermore, one Mujtahid may know of a Hadith while another may not. It is due to this reason that the Mujtahideen used to say to their students, if you find a Hadith after you leave me, and it contradicts what I have told you, throw away my understanding and follow the Hadith.

Example:

It is not permitted for a woman while she is menstruating to perform Tawaaf (circling around the Ka'aba). Based on this, Umar (RA) used to forbid women from completing the Hajj even if the menstruating started after leaving Arafat, which is the most important part of the Hajj. When he (RA) was informed that the Prophet (SAW) used to allow women to continue performing Hajj under similar situations, Umar (RA) subsequently lifted the ban, and allowed the woman to complete her Hajj.

A. Differences in the Sahabah's (RA) opinions as individuals

Some scholars accepted the opinion of one Sahabi as a legislative source, while others treated the Sahabah (RA) as Mujtahids whose individual opinions were not legally binding.

B. Differences in the practice of Qiyas

Some scholars practiced Qiyas (see section 6.4) while others practiced Istihsan (see section 7.1).

C. Differences in Ijma (Consensus of the Companions)

Some scholars used Ijma as-Sahabah, while others used Ijma Ahlil Madinah (People of Medinah), Ijma Al-Mujtahideen, and various other types of Ijma.

D. Differences in other legislative sources

Some Scholars used Maslaha Mursalah while others did not. This contributed to more differences among the scholars.

8.3.2 DIFFERENCES IN INTERPRETING THE TEXT ITSELF

A. Literalists

Some scholars took the literal understanding of the text, meaning that they took the text at its surface value, refusing to take deeper understandings. Some of these scholars were called Zahiris, or those who took only the apparent meanings of the texts.

B. Those who saw hidden meanings in the text

In addition to the apparent meaning, some Scholars took deeper and implicit meanings in the texts.

8.3.3 DIFFERENCES IN METHODOLOGY OF USUL-FIQH

There were differences in interpreting the forms and types of commands. For example, in the Hadith regarding the beard, there is a difference of opinion among the Scholars regarding whether the Hadith indicates Fard, Mandub or Mubah commands.

8.3.4 DIFFERENCES IN UNDERSTANDING THE ARABIC LANGUAGE

This may be due to a different understanding of the Arabic text where it offers more than one meaning. As an example, Allah (SWT) says in the Qur'an, in translation:

"The divorced woman should wait for a period of three Quru'" (TMQ Al-Baqarah: 228)

Quru' linguistically could mean the beginning of the menstruation period, and it could also mean the beginning of the purity period. The difference between these three Qurus from the beginning of menstruation and three Qurus from the beginning of the purity period is about 7 to 15 days.

Some scholars say Quru' means the purity period because of a Hadith in which the Prophet (SAW) instructed a woman to wait for the purity period. Other Scholars say that this Hadith is not authentic considered the Qur'an to mean the beginning of menstruation.

Besides all of this, one has to remember that the level of understanding of the text and the depth of thinking varies from one individual to another. These differences are a natural aspect of Allah's creation and a mercy from Him (SWT).

It is for these reasons that we have different scholars forming different Schools of Fiqh. Some of these scholars had students who wrote their understanding of the text and these writings were considered as their Madhahib. These include Abu Hanifah, Malik, Shafii, Ibn Hanbal, Jafar, and Zaid. Other scholars did not have the opportunity of having students write their understanding of the text, and these include Laith, Al Awzaii, and others.

These examples illustrate that there have always been differences of opinion. The Sahabah (RA), Tabeyin and Tabe Tabeyin bear witness to this fact. The Mujtahidun Mutlaq differed in their methodology, which led to the birth of different schools of Fiqh.

Although the Mujtahideen were most convinced by the Ijtihad they performed, they nevertheless recognised the possibility that they could be wrong. Accordingly, the Mujtahideen have stated that whatever is correct in their work is from Allah (SWT) and the errors are from themselves.

However, just because a Mujtahid is wrong, it does not mean that he should be barred from exercising Ijtihad. On the contrary, the Messenger of Allah (SAW) said,

"Whosoever does Ijtihad and errs therein shall have one reward. And whosoever performs Ijtihad and is correct shall have a double reward." (Bukhari & Muslim)

There is also a severe punishment for those who do Ijtihad without being qualified to do so, even if they are right. Allah (SWT) says:

".... pursue not that about which you have no knowledge; for surely the hearing, the sight, the heart, all of those will be called to account (on the Day of Judgment)" (TMQ al-Isra: 36)

One should not consider another opinion as being unIslamic simply because it is different from the opinion that he has adopted. Instead, respect must be given to other opinion on the one condition that they are based on Islamic evidences. **There is no need to respect opinions which are not based upon a Daleel because there is no place in Islam for these opinions.**

Therefore, it is necessary for every scholar to produce his Daleel in support of an opinion. This is to instill confidence in Muslims that his opinion is

Islamic. Opinions given without evidence are baseless and should be rejected.

This view towards other Islamic opinions will ensure the correct Islamic attitude. However, this measure alone will not provide the total answer to the problems we face today, especially to the problems of unifying Muslims on certain key issues. There will be many different opinions as to what the Hukm Sharii is. In many instances this will not be a problem. However, one can imagine where it is necessary for the Ummah to be united under one opinion; eg sighting the moon, electing the Khaleefah, etc.

Ijma as Sahabah has established that the Khaleefah has the authority to adopt certain rules and to enact them. The Sharii principle states:

"The Imam's decree settles the disagreement", and

"The Imam's decree is executed openly and privately."

All Muslims including the Mujtahideen, have to follow the opinion adopted by the Khaleefah, but they can maintain their opinion and teach it, while their obedience should be to the opinion that the Khaleefah adopts.

An example of this is the adoption of an opinion in the distribution of funds by Abu Bakr (RA) and Umar (RA). When Abu Bakr (RA) was the Khaleefah, he paid equal grants to all of the Sahabah (RA). He (RA) did not distinguish between the early Muslims and the new Muslims.

When the Islamic State started receiving larger funds through the liberation of various lands, Abu Bakr (RA) continues to distribute the wealth equally. Umar (RA) and some of the Sahabah (RA) insisted that the earliest Muslims should be given preference over the later converts.

Abu Bakr (RA) told him that he was aware of the differences that Umar (RA) had mentioned; however, his opinion was that distributing the funds equally was better in the sight of Allah (SWT) than the principle of preference.

When Umar (RA) became Khaleefah, he replaced Abu Bakr's (RA) adoption of equality with his principle of preference. Umar (RA) did not like to pay the same amount to those who fought against the Prophet (SAW) and those who fought with him. Accordingly, he gave a larger amount to the early Sahabah (RA) who fought in Badr and Uhud and the relatives of the Prophet (SAW).

Thus, when Abu Bakr (RA) was the Khaleefah, Umar (RA) left his understanding and enacted the decree of Abu Bakr (RA), as did the judges, governors, and all Muslims. However, when Umar (RA) became the Khaleefah, he obliged the enactment of his opinion and it was implemented by the others.

Different opinions should not be viewed as a weakness or a source of disunity. As we have seen, Muslims have had varying opinions in many issues since the time of the Messenger of Allah (SAW), as is mentioned in the Hadith of Banu Quraydhah. As long as the opinion is based on an Islamic evidence, and this opinion does not contradict an assured law, it should be respected as an Islamic opinion.

Finally, the way to achieve Islamic unity is not by suppressing different opinions and calling for the abandonment of Madhahib. Rather, it is achieved by Muslims living under the ideological leadership of Islam where the Khilafah makes the decision of which opinion to adopt in key issues.

CHAPTER 9.0

A BRIEF OVERVIEW OF SOME SCHOOLS OF THOUGHT

In order to conduct a comprehensive study in this issue, we need to first look at the status of Fiqh during the time of the Prophet (SAW), the era of the Sahabah (RA), and the era of the generations that followed them, better known as the Tabi'een and the Tabi'Tabi'een.

9.1 ERA OF THE PROPHET (saw)

The Prophet (SAW) received the revelation from Allah (SWT) and delivered it to all the people. The Muslims who used to live close to him (SAW) were the Sahabah (RA). When the Prophet (SAW) migrated to Madinah they went along with him. The Muslims of Mecca were the Muhajirun and the Muslims of Madinah were the Ansar. He (SAW) received the Message from Allah (SWT) and was ordered to convey it. Allah (SWT) says in the Qur'an:

"O Messenger, deliver the Message that was sent down to you from your Rabb, and if you did not do it, you did not convey His Message...." (TMQ Al-Ma'ida: 67)

"And we sent down to you the Zikr (the Qur'an), so that you would explain to mankind, that which was sent down to them" (TMQ An-Nahl: 44)

With these Ayah in mind, there are certain points that need to be mentioned:

1. No one would give a Fatwa in the presence of the Prophet, since they knew that he (SAW) was the authority.

2. Sometimes the Prophet would give the Sahabah (RA) an instruction, and the Sahabah (RA) would understand that instruction in two different ways. Moreover, the Prophet (SAW) would approve both groups In following their understandings. For example, the Prophet (SAW) gave the following instruction:

   "He who believes in Allah and the Day of Judgment should not pray Salatul-Asr except in Bani Quraydah."(Bukhari).

   One group of the Sahabah (RA) took the order at face value and journeyed to the area where Bani Quraydah resided, where they prayed Salatul-Asr. The second group, however, thought about the order and evaluated that the intent of the order of the Prophet (SAW) was for them to hasten to the area of Bani Quraydah. So they prayed Salatul-Asr, and then rushed to Bani Quraydah.

   Both groups of the Sahabah (RA) discussed their different understandings of the same order of the Prophet (SAW), and referred it back to him (SAW). The Prophet (SAW) approved both understandings. It is important to note that the differences did not occur due to an ambiguity in the order, rather it occurred due to the ability of Arabic language to convey various meanings and understandings.

3. While the Prophet (SAW), if the Sahabah (RA) were traveling without the Prophet (SAW), they used to conduct Ijtihad, and then refer back to the Prophet (SAW) when they returned For example, one Sahabi (RA) was wounded and was in a state where he needed to perform Ghusl before he could make Salat. He inquired from the Sahabah (RA) whether he could do the Tayamum in place of Ghusl (usually Tayamum replaces the Wudu). He was told that he could not make Tayamum and so he performed Ghusl and died. When the Prophet (SAW) heard about this occurrence he (SAW) said,

   "They killed him..."
   Then he (SAW) said:
   "Shouldn't they ask if they don't know..." (Abu Daoud)

   In another example, when Mu'ath ibn Jabl (RA) was being sent as a Wali to Yemen, he was asked by the Prophet (SAW) "With what will you judge?" He replied "The Qur'an, then the Sunnah, then by my Ijtihad". This Ahadith is considered to be Hasan by most scholars of Usul-al-Fiqh, while some scholars of Hadith do not consider it Hasan. The preceding points illustrate that the Qur'an and the Sunnah were the only acceptable reference points for the Sahabah (RA), and that they would refer back to the Prophet (SAW) in cases of uncertainty.

9.2 ERA OF THE SAHABAH (RA)

After the death of the Prophet (SAW), the Muslims selected Abu Bakr (RA) as the Khaleefah. One of the first issues he faced was a confusion on the part of Fatimah (RA), daughter of the Prophet (SAW), inheriting a piece of land which the Prophet (SAW) owned. Abu Bakr (RA) quoted the following Hadith which resolved the matter,

"We (Prophet's) do not leave things for inheritance. Whatever we leave is charity."(Bukhari & Muslim).

She (RA) then suggested to Abu Bakr (RA), to let her (RA) supervise the property and to distribute it the way the Prophet (SAW) used to do. Abu Bakr (RA) refused saying,

"I am not going to quit doing anything the Messenger (SAW) used to do."(Bukhari)

In another narration, Abu Bakr (RA) said,

"I am in charge after the Messenger (SAW)."

Thus Abu Bakr (RA) pointed out to Fatima (RA) that if he (RA) gave her (RA) this authority then what is the point of having a Khaleefah. Moreover, it was not up to her (RA) to act on behalf of the Khaleefah.

At that time Abu Bakr (RA) gathered the Sahabah (RA) and asked them where are you? Why are you leaving me? (Abu Bakr (RA) was referring to the Sahabah (RA) leaving for the newly liberated lands). If you want me to be the Khaleefah you cannot just appoint me and depart. Thus, Abu Bakr (RA) maintained this group of Sahabah (RA) with him (RA).

During this era, with the death of the Prophet (SAW), the Sahabah (RA) began performing Ijtihad for problems that arose which were not explicitly expressed in the Qur'an and Sunnah. The Sahabah (RA) compiled the Qur'an, and many of them had already committed the whole Qur'an to memory. The Ayah of the Qur'an were also written on stones, tree barks, or pieces of leather, and were scattered amongst the Sahabah (RA) in general.

Additionally, most of the Hadith were not documented, rather they had been committed to memory. No one single person had memorised the entire Sunnah as they had memorised the entire Qur'an. Nonetheless, the Qur'an the Sunnah together served as the reference point for the solutions to the problems that the Sahabah (RA) faced as a whole. After a while they found that not every single person was capable of understanding Islam, and so they began a program of educating those Muslims who were incapable.

At the time of the death of the Prophet (SAW), the Sahabah (RA) numbered in the thousands, however only about seven to ten of them used to give Fatwa more than the others, and were considered practical Fuqahaa, or people who were able to give the Islamic rule in practical, day to day problems. Included in this group were Umar, Ali, Ibn Umar, Ibn Abbas, Ibn Mas'ood, Zaid bin Thabit, and Aisha (RA). In their endeavours to determine the Hukm Sharii rules for problems, the Sahabah (RA) adhered to the Qur'an and Sunnah; however, they still arrived at varying and different opinions.

For example, in the issue of divorce, Abu Bakr (RA) and Umar bin Al-Khattab (RA) had different opinions. Umar (RA) was of the opinion that if a man says to his wife "I have divorced you" three times in one sitting, then the man would have divorced her three times and could not remarry the woman until she married and was divorced by someone else. While Abu Bakr (RA) was of the opinion that this would result in only one divorce.

In another example, Abu Bakr (RA) used to distribute the spoils of war equally amongst the Sahabah (RA). When Umar (RA) became the Khaleefah, he did not give those who became Muslim recently and who had fought against the Prophet (SAW) in the early wars, like Khalid bin Al-Walid (RA), as much as he gave to those who had accompanied the Prophet (SAW) in those earlier wars.

The differences amongst the Sahabah (RA) were not only limited to the details of the Hukm Sharii, they also had differences in certain branches of the Aqeedah.

However, these differences of opinions may exist in the branches of the Aqeedah, mainly due to linguistic structure of the Arabic language. Whereas, in the core of the Aqeedah there is only one correct understanding.

For example, in an issue related to the Aqeedah there is a difference of opinion regarding Israa', Allah (SWT) says;

Glory be to He who took his 'Abd on the Night Journey (Israa) from Masjid Al-Haram to Masjid Al-Aqsaa..." (TMQ Bani-Israel: 1)

Most of the Sahabah (RA) were of the opinion that the physical body of the Prophet (SAW) made the night journey or the Israa. Aisha (RA) and Mu'awiyah (RA) however were of the opinion that

the physical body of the Prophet (SAW) did not make the journey and that only his (SAW) spirit made it. Aisha's (RA) justification was that he (SAW) was not missed and no-one remembers his (SAW) body leaving.

Another example is where Aisha (RA) was told by a Sahabi (RA) that the deceased person will be punished because of the wailing and loud crying, performed by his family. Aisha (RA) rejected this claim because she understood that it contradicted the Ayah that says:

"No-one will bear the burden of another..." (TMQ Al-Anam: 146)

Imam Baghawi in his book "the Lights of the Sunnah", remarked that Abu Bakr (RA) used to look to the Book of Allah (SWT) to solve his problems. If he couldn't find a solution there, he would ask some of the Fuqahaa among the Sahabah (RA) for their Ijtihad in the particular issue. Imam Baghawi goes on to say that Umar (RA) used to consult the Sahabah (RA) even though he was a well known Faqih.

Even though the Sahabah (RA) disagreed, their disagreement was well within the guideline of understanding the text and this was considered normal. Imam Muhammed Abu Zahrah, while discussing the era of the Sahabah (RA), said that it is important to remove two misconceptions.

A. The first is that some people said that the Sahabah (RA) used to disregard the authentic Hadith and based their judgments on their mind or own rational thinking. Imam Zahrah said that it should be understood that none of the Sahabah (RA) left the text for their own rational opinion, rather their opinions were based and influenced entirely by the texts. He uses an example from the Khaleefah of Umar bin Al Khattab (RA), when he delayed cutting off the hand of the thief. Some people use this instance as an example that Umar (RA) did this solely due to his own thinking.

   This claim is incorrect, since there is a Hadith where the Prophet (SAW) said: "*Don't implement the Hudood in the cases of doubt*". There is also another Hadith in which the Prophet (SAW) states: "*There is no cutting in a famine*". And Medinah was in fact experiencing a famine experiencing a famine at the instance when Umar (RA) postponed implementing the Hud.

B. Some tried to classify the Sahabah (RA) into two groups: Those who adhered strictly to the traditions (Ahlul-Hadith), and those who did not adhere to texts, called Ahlul-Ra'ee. They claim that the first group did this because they were Classical Traditionalists, while the second group were Revivalists.

   This claim is incorrect, since both Ahlul-Hadith and Ahlul-Ra'ee adhered to the text. Imam Zahrah cited the example, which they use, regarding the stray animals in the State. The Prophet (SAW) said to leave them and they will reach their owner. But Umar (RA) acted differently in this regard. He put them in one place and allowed the owner to identify them and take them.

   It should be clear that Umar's action was in line with the Prophet's (SAW, in that the objective was to allow the wandering animals to reach their owner. The Prophet's (SAW) style or means in solving the problem was to allow the animals to wander.

   However, during Umar's (RA) time, when the State had expanded to the areas of Sham and North Africa, the tactic of putting the animals in one location was used to solve the same problem of returning the stray animals to their owners, and there is no conflict. So what Umar (RA) did was part of his responsibility which requires adopting some administrative procedures. These administrative decisions can be changed.

   It should be understood that there is a difference between an administrative order and a legislative order. Ordering a person to do his Salat if he made a mistake is a legal order, while tying up a wandering camel is an administrative order.

WHY WAS THERE DIFFERENCE OF OPINION AMONGST THE SAHABAH (RA) ?

The text sometimes could be understood in different ways due to the structure of the Ayah, and / or the structure of the Arabic language. For example, Allah (SWT) says:

"The divorced woman should wait for 3 periods (Quru)" (TMQ Al-Baqarah: 228)

The word Quru in the Arabic language can mean the time when the woman begins her menstruation, or the post menstruation period. The difference between three cycles beginning with the purity period is about 7 to 15 days.

Sometimes a Sahabi would issue a Fatwa without having heard of a Hadith related to that issue, and

which another Sahabi knew. However, these cases were usually resolved later.

How they viewed the texts and the methodology of interpretation. An example deals with the inheritance of the grandfather. Abu Bakr (RA) said that if one dies leaving a father, brothers, a wife and children, the presence of the father, who is considered the grandfather of the deceased person's children, would prevent other brothers from inheriting the wealth. Umar (RA) said that he would give the brothers and the grandfather the same amount after discussing this issue with Zaid bin Thabit (RA) (the foremost Sahabi in the area of inheritance).

9.3 ERA OF THE TABI'EEN

When Umar (RA) became the Khaleefah, if anyone from the Sahabah (RA) wanted to migrate to the newly liberated lands, he would have to take the permission of Umar (RA). Upon the request, Umar (RA) would grant a leave for a specified number of months on the condition that they would return.

When Uthman (RA) became the Khaleefah, he allowed the Sahabah (RA) to disperse. The Sahabah (RA) began leaving Medinah, heading out to regions such as North Africa, Sham, Kabul, and even Peking, while others went back to Mecca. For instance, Ibn Masud (RA) went to Kufah, Abdur-Rahman bin Awf (RA) reached Peking, while Abdullah bin Umar (RA) stayed in Madinah. However, for the most part, the two main groups of Sahabah (RA) were either in Kufah or Madinah.

Those whom we call the Tabi'een were the followers and companions of a specific Sahabi. For example, Sa'eed ibnu Musayyib, Nayfeh, and Salem ibn Abdullah bin Umar are well known Tabi'een who followed Abdullah bin Umar (RA). Most of the Tabi'een were not Arabs so they learned the Arabic language, and in some cases they learned the language better than the Arabs themselves, and became major contributors to Fiqh.

9.3.1 AHLUL HADITH & AHLUL RA'EE

During the days of the Tabi'een, two major methodologies of understanding the text arose:

a) Ahlul-Hadith (The People of Hadith) in Madinah.
b) Ahlul-Ra'ee (The People of Reason) in Kufah.

Those who followed Ahlul-Hadith (The People of Hadith) had more Hadith at their disposal and relied on the Hadith more than on Qiyas, while Ahlul-Ra'ee (The People of Ra'ee) relied more on Qiyas and the meanings behind the text, but did not at all neglect the Hadith. Another difference between the two schools is that the Ra'ee (reasoning) in the School of Ra'ee was based on Qiyas while in Madinah Ra'ee was based more on an elaboration of the text itself.

AHLUL-HADITH (THE PEOPLE OF HADITH)

Among the Tabi'een in Medinah were Sa'eed ibnu Musayyib, Zuhri, Yahya, and Rabiah-ar-Ra'ie, 'Urwa, Abu Bakr bin 'Ubaid bin Harith, Qasim bin Muhammed bin Abu Bakr, 'Ubaidullah, Sulayman bin Yassar, Khaija bin Zaid bin Thabit. They took their Fiqh from Abdullah bin Umar (RA). Sa'eed ibnu Musayyib was known as Al-Jareei (The Outspoken) or the on who has guts to make Ijtihad, while Rabiah was called Ar-Ra'ee because of his common practice of making Ijtihad.

The populace in Medinah had lived with the Prophet (SAW) and took his (SAW) actions and sayings in a more practical manner. Thus, Ahlel Hadith (People of the Book) emerged in Medinah.

There is also a misconception that Ahlul-Hadith (The People of Hadith) used to only adhere to the Hadith without performing Ijtihad whatsoever. This claim is false. For example, Imam Malik bin Anas, who emerged from the School of Medinah, used to do Ijtihad according to Maslaha Mursalah even more than Abu Hanifah, who emerged from the School of Kufah.

AHLUL-RA'EE (THE PEOPLE OF REASON)

Among the Tabi'een in Kufah were Ash-Sha'bee, Hasan al-Basree, and Ibrahim an-Nakha'ee, Hammaad, Alqamah bin Qais, Masjood bin Ajdah. These Tabi'een took their Fiqh from Ali bin Abi Talib (RA) and Abdullah bin Mas'ood (RA). Some of the Tabi'een such as Ash-Sha'bee were considered Muhaditheen (Scholars of Hadith).

The populace in Kufah (Iraq) was experiencing many problems such as the fabrication of Hadith, political turmoil, etc., and the scholars very careful in collecting Hadith due to the possibility of fabrication. Due to these problems, they often used reasoning. Reasoning (Ra'ee) here implies opinion derived from different understandings of the text. Thus, they came to be known as Ahlel Ra'ee (People of the Reasoning).

The word Ra'ee linguistically means: opinion. Therefore some people think that the term Ahlul-Ra'ee (The People of Ra'ee) mean the people who present their opinion. This is a misconception, to anyone who believes that their opinion was based on their desires. The opinion presented by Ahlul-Ra'ee

was through their Ijtihad which was based on the legislative evidences, ie Qur'an and Sunnah.

The Prophet (SAW) said: "Allah does not remove the 'Ilm after it was given to you, rather the 'Ilm would be removed with the death of the 'Ulema. Then some people, who are ignorant, will start giving their Ra'ee based on their desires and they are misled and will lead the Ummah astray."(Bukhari & Ahmad)

He (SAW) also said: "My Ummah will be divided into 70 something sects. The worst group will be those who will start taking the Deen from their Aql." (Al Darami)

He (SAW) also said, "He who adopts an opinion based on his Aql, he will reserve for himself a place in the hell-fire." (Bukhari & Muslim)

These Ahadith are clearly referring to the person who adopts opinions or gives Fatwa based on his Aql without any evidence from the Shari'ah, Ahlul-Ra'ee on the other hand, were those who exerted their utmost effort in scanning the Islamic texts, and then issued an opinion. This process is called Ijtihad.

Some people say that Ahlul-Ra'ee did not utilise Hadith in issuing their opinions. This claim is false. People like Ash-Sha'bee were recognised Muhaditheen while being from Kufah and from Ahlul-Ra'ee.

The main difference between them was that the People of Ra'ee practiced more Qiyas and Istihsan and they went deeper into the text to extract more rulings than the People of Hadith. These two main schools influenced many other schools of thought.

9.4 MADHAB OF IMAM ABU HANIFAH (RA)

Abu Hanifah al Numan ibn Thabit ibn Zuta (80-150 A.H. / 700-768 A.D.) was born during the Khilafah of Abdul Malik bin Marwan. Imam Abu Hanifah lived through 52 years of Ummayyid rule and witnessed the Khilafah of ten Umayyad Khulafa including that of Umar bin Abdul Aziz who ruled when the Imam was 18 years of age.

He also saw 18 years of Abbasid rule, including that of Saffah and Mansoor. He realised that the Ummayids had no claim on the Khilafah but he did not rebel against them since they were given the Bay'ah. He also did not speak out against the Abbassids; however, he started doing so when they started harassing the descendants of Ali (RA). Imam Abu Hanifah earned the title of Imam 'Aazam., Imam Shafii used to say "The people in Fiqh are dependent upon Abu Hanifah".

He was born to a well known Persian family in Kufah and spent most of his life there. His father was a good friend of Ali bin Abi Talib (RA). The two Sahabah (RA) who established the Kufa School were Ali bin Abi Talib (RA) and Abdullah bin Mas'ood (RA). They taught Tabi'een like Shurayh, Arqam bin Qais, Masrooq bin al-Ajdah. They in turn taught Ibrahim An-Nakha'ee, Ash-Sha'bee. These two taught Hammaad Ar-Raawiyyah, who served as the teacher of Imam Abu Hanifah. Abu Hanifah studied with Hammaad for 18 years and took over his study circle (halaqah) after Hammaad's death in 120 A.H. Abu Hanifah also studied from Imam Jafar as Sadiq.

Abu Hanifah's two most famous students were Muhammed bin al-Hasan, and Qadee Abu Yusef, who served as Chief Justice in the time of Haroon ar-Rashid and wrote a book called Al-Kharaj which detailed the Economic system in Islam. Each of Abu Hanifah's students developed into Mujtahids of their own right, with the ability of developing their own Usul ul-Fiqh. However, they kept the Usul of Abu Hanifah and were considered Mujtahids of the Madhab of Abu Hanifah.

Abu Hanifah was a trader by profession, specialising in silk. In his early life he studied 'Ilmul Kalaam, but abandoned it afterwards. Once he heard his son Hammaad, debating in 'Ilmul Kalaam, he discouraged him from doing so. His son asked him why he was prohibiting him when he himself used to debate in 'Ilmul-Kalaam.

Abu Hanifah replied that he used to debate in 'Ilmul Kalaam while being afraid that others would be wrong in an issue. Whereas you are debating with the hope that your opponent would be wrong in an issue in order to exploit his mistake. He wants his opponent to make a mistake in 'Ilmul Kalaam means that he wants him to be a Kafir ('Ilmul Kalaam deals with the issues of the Aqeedah), and he who wants his opponent to be a Kafir will become a Kafir before his opponent. So do not debate in 'Ilmul Kalaam.

9.4.1 BOOKS AND STUDENTS FROM THE MADHAB OF IMAM ABU HANIFAH

Abu Hanifah wrote many books, and his students also authored many important books on Islam. The books of Abu Hanifah include Fiqh ul-Akbar and Al 'Alim-ul-Muta'allim.

The books of those who followed his Madhab include, but is not limited to the following:

- Al Kharaj by Qadee Abu Yusef (Fiqh on Islamic Economic System)

- Al Mabsoot by As-Sarkhasee (Fiqh)
- Bada'ee as-Sana'ee by Al-Kasaanee (Fiqh)
- Fat-hul Qadeer by Kamal ibn Humam (Fiqh)
- Kitab-ul-Usul-ul Fiqh by Al Bazdawee (Usul-ul-Fiqh)
- Kitab-ul-Aathar by Yusef bin Abu Yusef (Hadith)

9.5 MADHAB OF IMAM MALIK (RA)

Malik ibn Anas (93 AH- 179 AH) was born and passed away in Medinah. His ancestral place was Yemen. After the birth of Islam, his ancestors who had become Muslims migrated to and settled in Medinah. He received his education in Madinah, which was the highest place of learning in the vast Islamic State and housed most of the distinguished Sahabah (RA) of the Prophet (SAW).

He studied under Abdur-Rahman ibn Hormuz, who advised Malik that: "The Alim (Scholar) should teach the people to say: "I do not know". Imam Malik followed and adhered to this advice throughout his life. Once a man attended his Halaqah and asked him a a question to which Imam Malik replied: "I do not know, no-one else ever asked this question.... the scholars from before never discussed such a topic."

Then Imam Malik told the man to come back the following day and he would see if he would be able to supply the answer. When the man returned the following day, Imam Malik again told him that he had no answer. The man then told him that he had heard that Imam Malik was the most knowledgeable man in the world, and so if Imam Malik did not know, then who else would know. Imam Malik kept with his answer that he did not know.

Imam Malik also studied with Ibn ShihaabAz-Zuhri, Naafi' the ex-slave of Abdullah bin Umar, Yahyah ibn Saeed; Rabiah ar-Ra'ee; and Jafar As-Sadiq. Imam Malik learned Ar-Ra'ee from Rabiah and from Yahyah ibn Sa'eed, and he learned Hadith from Naafi' and from Ibn Shihaab Az-Zuhri. Therefore, we can say that Imam Malik had studied from both schools of Hadith and Ra'ee, since Ra'ee was also being taught in Al-Madinah.

Imam Malik was known for his very sharp memory and quick thinking. He used to think very hard and carefully to arrive at his opinions and never rushed to issue a Fatwa. Once someone asked him a question, and another person remarked that the question was very easy. Imam Malik replied that there is nothing easy or trivial with regard to giving a rule. Imam Malik also disliked lengthy arguments. He was once asked that if a person was very knowledgeable in the Hadith and Sunnah should that person continue arguing his point. Imam Malik replied that such a person should just issue his opinion and his evidence without engaging in too much of a discussion or debate.

Imam Malik's classes were characterised by their serenity, discipline and high sense of respect, exhibited by the students for their learned teacher. Once, during his visit to Madinah, Harun ar Rashid wanted to hear the Muwatta (collection of traditions by Imam Malik). Harun sent for the Imam who advised him saying "Rashid, tradition is a learning that used to be patronised by your ancestors. They had utmost regard for it. If you do not respect it as a Khaleef, no-one else will. Furthermore, people come to seek knowledge but knowledge doesn't seek people." Khaleef Harun ar Rashid agreed to listen to the Muwatta and his students.

Among the persons who benefited from Imam Malik's learning were Khulafah such as Mansur, Hadi, Haroon, and Mamun. Scholars like Abu Hanifah, Shafii, and Abu Yusuf to name just a few, also benefited from the teachings of Imam Malik.

Imam Malik lived under the rule of the Ummayyads and the Abbassids. He did not entirely agree with their rule, nor did he join the rebels, but rather he advised that the people should not tolerate their wrong doings. He was not exempt from problems with the rulers, especially during the era of Abu Jafar al-Mansoor. Imam Malik had reported a Hadith in which the Prophet (SAW) said:

"There is no oath if given under duress"

At that time some of the Shi'ah, under the leadership of Muhammed Nafsul Zakiyyah were leading a revolt against the Khaleefah, using this Hadith as a basis for their revolt. Abu Jafar al-Mansoor sent a messenger to Imam Malik to ascertain if this Hadith had in fact been reported and supported by Imam Malik. Imam Malik told the Messenger that he had in fact reported that Riwayah, and so the Khaleefah understood from the reply that Imam Malik was a part of the Shi'ah's rebellion. He was imprisoned and was beaten very severely to the point that his hands became deformed (Imam Malik after this used to pray with his hands at his side).
Afterwards, Abu Jafar tried to reconcile with Imam Malik. Imam Malik once said:

"When I returned to meet Abu Jafar during the Hajj season, he told me: 'I swear by Allah, I did not instruct anyone with what happened to you. The

people of Al-Haramayn will remain in a good condition as long as you are with them. Allah lifted up this Ummah as long as you are with them. I ordered the Wali who was responsible to come to me and I have put him in jail, humiliated, insulted and punished him with more than what you were punished".

Imam Malik continued, "May Allah give you good health and a good destination on the day of Judgment. I have forgiven that Wali since he is a relative of the Prophet (SAW)."

9.5.1 BOOKS AND STUDENTS FROM THE MADHAB IMAM MALIK

His book Al-Muwatta is one of the earliest collections of Ahadith. Imam Malik was one of the greatest scholars in the field of Hadith. He was also one of the few who wrote down the results of his Isnad (chain of reporters) in his collection of Hadith for the benefit of later generations.

He began writing it during the era of Al Mansoor and finished it during the era of Al Mahdi. Harun Ar-Rasheed wanted to adopt it as a legislative source of Islamic State's canons but Imam Malik refused, and was also against the idea of hanging a copy in the Ka'bah. The book of Al Mudawan Al Kubrah is also attributed to him.

Well-recognised Malaki scholars include:

- Abdur-Rahman ibn Qasim
- Abdul Wahab Ali al Baghdadi
- Ali ibn Hazm
- Abu Bakr Muhammad al Baqillani
- Ibn Rushd who wrote Bidayatul Mujtahid

9.6 MADHAB OF IMAM SHAFII

Muhammad ibn Idris ash-Shafii (150-205 AH / 767-820 CE) is considered to be the architect of Usul al Fiqh. He was born in Ghazza (Palestine) and when he was two years old his mother took him to Mecca. Imam Shafii is from the tribe of Quraysh and his lineage meets with the Prophet (SAW) at Abdu Manaf.

At an early age his mother took him to the local Kuttab to memorize the Qur'an, but since they were poor and could not afford the tuition, he was not allowed to attend the classes. He used to stay within an earshot of the class listening to the instructions of the Shaykh and memorising them. When the teacher would leave, young Shafii would go to help the students with their memorisation. The teacher learned about this and allowed young Shafii in the class with the condition that he would help the students with their memorisation.

When he was about seven years old he had memorised the Qur'an, and they went to Masjid Al-Haram where he studied the Arabic language. By the time he graduated, he had learned all the versions of the classical Arabic language. His statements are considered to be standards in the Arabic language. After completing his Arabic studies, a man advised him to study Hadith, Fiqh, and Ulum-ul-Quran, and so he moved to Medinah.

There he studied under Imam Malik ibn Anas prior to his death in 179 A.H. It was directly from Imam Malik that Imam Shafii learned the Muwatta. He then traveled to Iraq, where he stayed as the guest of Muhammed bin Al-Hasan, the student of Abu Hanifah. Imam Shafii would debate and study with both Muhammed bin al-Hasan and Qadee Abu Yusef.

He would then return to Medinah, around 174 A.H., to visit with his old friend Imam Malik. After the death of Imam Malik, Imam Shafii traveled to Yemen. There he met Umar bin Abi Salamah, teacher of al Awazaii, a great scholar in Usul al Fiqh.

While there, some problems arose between the Khaleefah Harun ar-Rashid and Ahl-ul-Bayt. Imam Shafii was accused of siding with the Ahl-ul-Bayt against the Khaleefah, and was arrested and taken to Baghdad to the court of the Khaleefah. After a discussion with the Khaleefah to clear himself of any wrong doing, Imam Shafii was invited by the Khaleefah to advise him. It is recorded that he was so firm and strong in his advice to the Khaleefah, that the Khaleefah wept.

While in Baghdad he met Abdur Rahman Bin al Mahdi (Scholar of Hadith) in 195 A.H., who asked him to write a book explaining the methodology of understanding Fiqh. In this work, Imam Shafii combined both the School of Hadith in Medinah and School of Ra'ee in Kufah. He was able to do this because he was aquatinted with both schools. In Medinah he studied under Imam Malik and in Kufah he met Muhammed bin al Hasan (follower of Hanafii school of Fiqh). The outcome of this book was called Ar-Risala (This old version does not exist today).

Imam Shafii then decided to move to Egypt. While in Egypt Imam Shafii rewrote his book Ar-Risala. In the New Risala, he established new principles in Usul al Fiqh. Thus, his changing to a new methodology changed his Fatwas because the pattern for giving Fatwas is as follows:

Usul al Fiqh → **Fiqh** → **Fatwa**

Some think that Imam Shafii changed his Fiqh due to the new circumstances or environment in Egypt. We must understand that Imam Shafii did not rewrite his book for the sake of it, or because he changed his location. There are really only two possibilities for the re-writing of Ar-Risala.

Imam Shafii had put in his mind that he wanted to reach a specific conclusion and in order to do so he would have to change the basis for those predetermined conclusions, or

Imam Shafii found that the old basis he had used was wrong, and so it was necessary to redo or to revise his basis for deriving his Fiqh.

If there is a change in Usul al Fiqh there will obviously be a different ruling and not vice-versa, because a Mujtahid is not allowed to think of a ruling before deciding on which sources to extract the rulings from. Therefore, as a result of changing the Usul al Fiqh there were different Fatwas. the reason for the change was that he thought that his earlier Usul al Fiqh was wrong. This change was not due to time or place. Therefore, his Madhab had changed completely because his Usul al Fiqh had changed. This very important point, if it is not understood correctly could prove to be misleading.

Imam Shafii never debated in ‘Ilm-ul-Kalaam. Regarding it he used to say; “Debating in Fiqh, at the very least would lead the people to make fun of you, for example, saying the Diyah for murder is an egg. Debating in Ilm ul Kalaam, they would say that you are deviating and making a Bid’ah. So go and debate in Fiqh, and leave ‘Ilm ul Kalaam.”

9.6.1 BOOKS AND STUDENTS FROM THE MADHAB OF IMAM SHAFII

Imam Shafii’s books include:

- Ar-Risalah
- Al-Umm
- Jimaa ul-Ilm
- Ibtaal ul-Istihsaan
- Musnad Ash-Shafii’
- Ahkaam-ul-Quran

Those who are considered to be from his Madhab include; Ibn Kathir, As-Suyuti, Al-Muzni, Al-Buwaytee, and Ar-Rabee.

9.7 MADHAB OF IMAM IBN HANBAL

Imam Abu Abdullah Ahmad bin Hanbal (164 AH - 241 AH) was born and passed away in Baghdad. His mother and his uncle took care of him due to the death of his father when he was very young.

Baghdad at that time was experiencing a very strong intellectual movement, and was the Capital of the Islamic State. It was residence for many scholars and intellectuals. It was in this environment that Imam Ahmad studied the Qur’an, Arabic language, Hadith, the sayings of the Sahabah (RA), and the Seerah of the Prophet (SAW). At an early age it was quite evident that Imam Ahmad possessed a very sharp and keen intellectual ability.

He was known to be very serious in his youth. At about 15 years of age, in 179 AH, he began studying and taking care of the Science of Hadith, under the tutelage of Qadee Abu Yusef. In 186 AH Imam Ahmad began traveling to Basrah, Hijaz and Yemen. It is reported that he went to Hijaz at least five times. In 187 AH he met Imam Shafii in Mecca. In Yemen he took Hadith from Az-Zuhri and Ibn Musayyib.

A person once asked him about his busy traveling schedule and he replied; “I will keep my pen with me all the way to the grave.” He met Imam Shafii again in Baghdad and studied in Imam Shafii’s Halaqah. Imam Shafii said “When I left Baghdad, I did not leave behind me a person more knowledgeable and better than Ahmad”.

Imam Ahmad came up at a very opportune time, in that he got a chance to read what was already documented by the great scholars before him such as Al-Aathar by Yusef bin Qadee Abu Yusef, the works of Muhammed ibn Hasan, Imam Shafii and Imam Malik’s Al-Muwatta. He was able to study Hadith, Sunnah and Fiqh all together. He collected 40,000 Ahadith in his famous book called Al Musnad. In this book he classified the Hadith based on the names of the Sahabah (RA) who reported them, as well as the Fiqh of the Sahabah (RA).

At the age of 40, he began his own Halaqah, although it was reported that before this he had already been issuing Fatwa. He used to give two Halaqahs, one was public and the other was for his students and his children. He used to instruct his students to write down the Hadith and did not encourage them to write down his Fatawa.

9.7.1 IMAM AHMAD AND 'ILM-UL-KALAAM

A man wrote a letter to Imam Ahmad asking him to debate with a person from the Muttakillimeen (one who practices Ilm ul Kalaam). Imam Ahmad replied that he already had the chance to meet with those from the Muttakillimeen but he chose not to sit down with those deviant people. Imam Ahmad's opinion was that the Book of Allah had to be taken the way it was revealed.

Because of such a position, he was usually at odds and in direct confrontation with people like Mu'tazilah, who at that time were supported by the Khaleefah Ma'mun. The Mu'tazilah used to say that the Qur'an was created and developed this opinion as a reaction to a position held by some of the Christians at that time.

A Christian during that time called Yuhannah Al-Damashqee used to instruct his followers that the best way to debate with the Muslims was to ask them about Allah's speech or word, and whether it was eternal or not. If they say it is eternal, then Jesus would also have to be eternal since the Qur'an says Jesus id Kalimat-ul-Allah, or Allah's word. If they say that Allah's speech is not eternal, then this would mean that Allah's speech was created.

Being influenced by this, the Mu'tazilah began carrying the opinion that the Qur'an was created, thinking that this would cut off any avenue that could lead to the conclusion that Jesus was eternal. This opinion was adopted by the Khaleefah Al Ma'mun in the year 212 AH, and in 218 AH Al Ma-mun began imposing this opinion on the people, enacting a punishment on those who would not say that the Qur'an was created.

Imam Ahmad was one of the few people who stood fast in his opinion regardless of the punishment that he would face. He refused to say what the Khaleefah was trying to persuade him to say. When the people asked him why don't you just say the Qur'an was created and you will be free from the persecution? Imam Ahmad replied, "Then how will the Ummah know the truth?"

Imam Ahmad's opinion was that the entire issue was not one to be discussed since it was no more than a reaction to the Christians' debate, and that such an issue regarding the Islamic Aqeedah was never discussed by the Prophet (SAW), nor any of the Sahabah (RA). While discussing this issue with another scholar who followed the Mu'tazilah's opinion, Imam Ahmad said;

"You are saying something that the Prophet, Abu Bakr, Umar, Uthman and Ali never said. This could mean one of two things. Either you say they knew it and kept quiet, or that they did not know about it. If they knew and kept quiet then I will follow their opinions. If they did not know about it, then who are you to know something (regarding the Islamic Aqeedah) that the Prophet (SAW) did not know?"

It should be clear here, regarding the opinion adopted by the Mu'tazilah that the issue is not whether they were right or wrong, rather the issue is with regard to using 'Ilm ul-Kalaam. Because of 'Ilm ul-Kalaam, Muslims began debating issues that were once debated by the ancient Greeks and as a result, they lost a clear understanding of many issues related to the Islamic Aqeedah. The Islamic Aqeedah should be understood within the methodology of the Qur'an.

This methodology separates between two Daleel, ie the mind and the conclusive texts (Qur'an and Mutawatir Hadith). The mind is used to become convinced that the universe was created and is organised by Allah (SWT); that the Qur'an was revealed by Allah (SWT); and that there is a need for a Messenger to convey this Message and that Prophet Muhammed (SAW) is the Messenger to whom the Qur'an was revealed. Once we believe in these principles of the Islamic Aqeedah, then the role of the mind is to understand the conclusive texts as they were given with regard to the angels, Jinns, the Day of Judgment and the hereafter.

We should not discuss any issue dealing with the Ghayb or the unsensed with our minds. The correct way is to believe in everything that the Revelation brought to us the way it is, without trying to change it, adding to it, deleting from it or twisting its meaning. This means that issues such as the Jinns, angels, and the attributes of Allah (SWT) cannot be discussed based on our minds or intellect.

We cannot even describe the attributes or anything related to the entity or essence of Allah (SWT). Because of 'Ilm ul-Kalaam, Muslims started carrying certain deviant opinions and ideas regarding the Islamic Aqeedah, which resulted in one of the many factors which led to the decline of the Muslim Ummah. It should also be clear that none of the four Imam ever got entangled in 'Ilm ul-Kalaam.

Imam Ahmad did not document his Fiqh as did Imam Shafii', and consequently his Fiqh was transmitted by his students. Imam Ahmad is said to have many opinions regarding an issue, and this caused some people to say that Ahmad was a Muhadith rather than a Faqih. It is important to note here that the varying opinions of Imam Ahmad were actually his quoting the varying opinions of the

Sahabah (RA) without weighing one opinion against the other.

Besides being a great Faqih, he was a great scholar in the Sunnah. His title was Imam al Sunnah and the eliminator of Bid'a.

9.7.2 STUDENTS FROM THE MADHAB OF IMAM HANBAL

Well-recognised Hanbali scholars:

- Ibn Qudama
- Ibn Taymiah
- Ibn al Qaiyam

9.7.2.1 IBN TAYMIYYAH

Ibn Taymiyyah (661 AH - 728 AH) was born in a family wherein both his father and grandfather were scholars of the Hanbali Madhab. Under the supervision of his father he memorised the Qur'an, studied Hadith, and learned Hanbali Fiqh. After the invasion of Baghdad, at the hands of the Tartars, he moved to Damascus where he became engaged in various activities aimed at waging Jihad against the invading Tartars.

He is characterised as the one who rejected Taqleed or imitation; he never followed the Sufi approach and used to call for Jihad; and he used to call for Hanbali Fiqh which often put him in direct confrontation with those who utilised other Fiqh.

He disagreed with all four Imams on many issues and used to be confronted because of it; however, he never compromised his position. He also tolerated the other opinions as long as they were based on the Islamic texts, even though they conflicted with his own opinions.

In his book, Al Fatawa, he wrote that Ahl as-Salaf had many opinions, even in the areas of Aqeedah. Throughout his life Ibn Taymiyyah never tolerated injustice from any ruler and worked tirelessly for the complete and comprehensive implementation of Islam in the Islamic State.

It's unfortunate that some Muslims who promote the ideas and understandings of Ibn Taymiah make excuses for unjust rulers and their tools, the paid scholars. They do all this while claiming that they are following the example of Ibn Taymiyyah. If one really wants to follow Ibn Taymiyyah then one must follow his comprehensive approach to Islam. Quoting one sentence or opinion of Ibn Taymiyyah and using it as a generalisation for his entire life actually does a disservice in the presentation of the life of such a great scholar of Islam.

9.8 MADHAB OF IBN HAZM

Ibn Hazm (384 AH - 456 AH) was born in Cordoba in Andalucia (Spain) which at that time was the capital of science for all of Europe. He studied Qur'an, Hadith, and Malaki Fiqh. He then moved to study Shafii' Fiqh, and left it. Later on, he moved to study about the Madhab of Abu Dawud Az-Zahiri from Mas'ud bin Sulayman.

Ibn Hazm rejected Qiyas and took only the literal meaning of the text to the point that if a man urinated in a body of water; for example, he would consider for the water Najis (filthy); however, if the urine was from a pig, then the water would not be considered as najis. Ibn Hazm fought against Taqleed and called the people to discuss issues based on the Daleel. This caused him some problems from some people at that time. His most important book is Al-Muhalla.

9.9 INTRODUCTION TO MADHAB OF IMAM ZAID AND IMAM JAFAR

The Messenger of Allah (SAW) died without appointing a specific person to succeed him (SAW) as a Khaleefah. After the Sahabah (RA) met and deliberated, they decided to select Abu Bakr (RA) as the Khaleefah. All the Sahabah (RA), including Ali (RA), gave the Bay'ah to Abu Bakr (RA). Before he died, Abu Bakr (RA) nominated Umar bin Al-Khattab (RA) to be his successor, after consulting with the people of Medinah. Umar (RA) became the Khaleefah; however, only after being given the Bay'ah. On his death bed, Umar (RA) nominated 6 people and suggested that the Khaleefah be chosen from among them.

Included in this list of nominees were Ali bin Abi Talib (RA) and Uthman bin al-Affan (RA). Abdur-Rahman bin 'Awf (RA) withdrew his name from the list of nominees and coordinated the selection process of the other five nominees. He later announced that Uthman (RA) had received more support than Ali (RA) from the people, and so the Bay'ah was given to Uthman (RA) as the third Khaleefah.

During Umar's (RA) Khilafah, he restricted the Sahabah (RA) from leaving Medinah, but in Uthman's (RA) Khilafah, the Sahabah (RA) were allowed to disperse from Medinah. There were some decisions made by Khaleefah Uthman (RA) that were debated by some of the Sahabah (RA). Some people from Egypt and other out-lying territories, orchestrated by Abdullah bin Saba, advanced to

Medinah in order to kill the Khaleefah Uthman (RA). Abdullah bin Sabaa was a Jew, who supposedly converted to Islam.

All of the Sahabah (RA), including Ali (RA), tried their best to negotiate with those people, but they were not inclined to listen to what was being presented by Ali (RA). The issue escalated and led to the assassination of Uthman (RA). Those who were guarding Uthman (RA) at the time of his assassination were extremely honourable people and included Ali's (RA) sons Hasan (RA) and Hussein (RA); however, the guards were eventually overwhelmed and Uthman (RA) was assassinated.

This event actually illustrates that the Sahabah (RA), including Ali (RA) viewed Uthman (RA) to give him the Bay'ah, and Ali (RA) refused, saying that he wanted nothing to do with such filthy people. The Sahabah (RA), however, approached Ali (RA) and gave him the Bay'ah, and only then did he become the Khaleefah.

During the era of Ali (RA), he had differences with some of the Sahabah (RA). Actually Ali (RA) found himself facing a variety of critical issues. Such as his (RA) opinion that the organised conspiracy which led to Uthman's (RA) assassination was an organised internal disruption rather than a one man effort. There were differences with Sahabah (RA) such as Talha, Zubair, and Aisha (RA); the religion of Mu'awiyyah (RA) and his persistence in having Uthman's (RA) killers handed over to him; some of Ali's (RA) so-called "supporters" began evoking claims that Ali (RA) was God incarnate.

From his side, Ali (RA) chose to handle all of these crises at once; he killed those who claimed that he was god; moved to Kufah to deal with Talha, Zubair and Aisha (RA) issue; and was able to overcome this although it led to the killing of Talha and Zubair (RA); and then he (RA) moved towards Syria to deal with Mu'awiyyah (RA). All of these activities caused Ali (RA) to be continuously engaged in one conflict or another. Finally the conflict ended in his (RA) assassination.

It is within this environment that the seeds of the Shi'ah were sown and started growing. In the beginning it started as a political movement working under the pretext of getting the Khilafah back to Ali (RA) and his descendants. Later on it was given its intellectual context. The Shi'ah were divided into many groups. Some went to the extreme claiming that Ali (RA) was god. Others claimed that the Messengership was meant for Ali (RA) and not for Muhammed (SAW). These two groups were not considered Muslims. Even the Shi'ah label these groups as non-Muslims. In addition to this, there were others like the Zaidis and the Jafaris who did not at all go to these extremes.

Some people presently generalise and label all of the Shi'ah as Non-Muslims. This generalisation is not at all correct, since not all of the Shi'ah believe that Ali (RA) deserved the Messengership or that Ali (RA) was god incarnate, or that the Qur'an was changed and is imperfect. The Zaidis and the Jafaris cannot be labeled as non-Muslims since they do not adhere to such Kufr beliefs. However, if an individual carries such beliefs or ideas then that individual deserves the label as being non-Muslim, whether he is Shi'ah or Sunni. Anyone who carries Kufr ideas and concepts, even if he was born to Sunni parents, they will not be considered as Muslims.

9.9.1 MADHAB OF IMAM ZAID

Imam Zaid bin Ali (80 AH - 122 AH) was born in Medinah. His father Ali, son of Al-Hussein bin Ali bin Abi Talib the fourth Khaleefah, was one of the few descendants of Hussein that were spared at Karbalah. Imam Zaid's father was highly respected and highly educated, and rejected the extremism of those who claimed themselves to be Shi'ah.

It was in this environment that Imam Zaid was born. His father died when he was 14 years old and his elder brother Muhammed al-Baaqir took care of him. His early education was taken from his elder brother Muhammed al-Baaqir, who was considered at that time as a great scholar. He also studied with another great scholar, Abdullah bin Hasan bin Ali. Both Al Baaqir and Abdullah bin Hasan were teachers of many great scholars and Imams like Abu Hanifah and Imam Malik, who took Hadith from them. Zaid also studied under other Tabi'een who were residing in Medinah.

Later on Imam Zaid moved to Basrah where he met Waasil bin Ataa, the founder of the Mu'tazilahs. He kept moving between Iraq and Hijaz seeking knowledge. Abu Hanifah once said about Imam Zaid, "I met with Zaid and I never saw in his generation a person more knowledgeable, as quick a thinker, or more eloquent than him. He was in a class by himself."

Imam Zaid had differences with Khaleefah Abdul Malik, and even rebelled against him. He went to Kufah where he was joined by Shi'ah or Iraq. 15,000 people gave him the Bay'ah in a Masjid, but only about 400 of them stood with him when he faced the army of the Khaleefah. Imam Zaid felt that a military confrontation was the best way to deal with Khaleefah, and felt let down after he was abandoned by his so-called supporters in the same way that his

grandfather Hussein was abandoned by his supporters.

Even though both Imam Hussein and Imam Zaid utilised military confrontation to correct the situation in the Islamic State at that time, it seems that what was needed to be established was a group that would work in the Ummah to educate it and serve as a safeguard for the Ummah, instead of rebelling against the Khaleefah without this preparation, which did not at all solve the problem but rather made matters more complicated.

The stand by Imam Zaid and his few supporters against the army of the Khaleefah ended with his death. He was heard saying: "I am worried that I will be let down just like my grandfather Al Hussein was let down," and in fact this was true.

Although he viewed Ali (RA) as deserving of the Khilafah, he also recognised the Khilafah of Abu Bakr, Umar, and Uthman (RA). He also believed that the Khulafaa did not have to be predetermined by the texts, but that it was enough to be from Banu Hashim, and that the Khaleefah was not infallible. He did not document his Madhab, rather it was done afterwards.

His Fiqh was documented in Al Majmu', which was documented by his student Abu Khalid Amr ibn Khalid Waasifi. The Grand Majmu' or Al-Majmu' Al-Akbar is made up of two sections, Majmu' Al-Hadith and Majmu' Al-Fiqh.

After Imam Zaid's death, many students from his Madhab emerged, especially in Yemen. The most interesting thing about this Madhab is that they never closed the door of Ijtihad. This Madhab is very close to that of Abu Hanifah's in the areas of Mu'amalaat or transactions. Nowadays this Madhab is said to be the closest to the four popular Madhabs of Abu Hanifah, Malik, Shafii and Hanbal.

Imam Abu Zahrah, in his book History of the Islamic Schools of Thought (Taareekhul Madhabil Islamiyyah), said that there are two Zaidi Madhabs, the one before his death and the one that emerged after his death.

After the problems which occurred with the Khaleefah Al Mansoor, the Zaidi Madhab became weak and other Shi'ah Imams started to influence it. Some of these Imams did not approve of the Khilafah of Abu Bakr (RA) and Umar (RA) and so there is an appearance that this was an inherent part of the Madhab. However, presently the Zaidis have gone back to Imam Zaid's adoptions. Two of these scholars who followed the early Madhab of Imam Zaid are Imam Shawkanee and Imam Muhammed bin Isma'eel As-Sana'anee

IMAM SHAWKANEE

One of the most famous scholars of the Madhab of Imam Zaid is Imam Shawkanee. Imam Shawkanee died in 1250 AH in Yemen. His writings show that he was against Taqleed. They also show that he treated all Madhabs equally, including the Zaidis, and in the issues of the Aqeedah he did not go against that of the Salaf at all. Imam Shawkanee's books include Nayl Awtaar, in Hadith and Fat-hul-Qadeer, in Tafseer.

IMAM MUHAMMED BIN ISMA'EEL AS-SANA'ANEE

Imam Muhammed bin Isma'eel as-Sana'anee (1059 AH - 1182 AH) was born in Yemen and moved to Mecca, where he developed to be an extremely capable Mujtahid. He rejected the Taqleed, and was severely challenged by those who refused the concept of Ijtihad; however, he held his ground and never paid attention to his objectors. One of his many books is Subul-us-Salaam, in Hadith.

Both Subul-us-Salaam and Nayl Awtaar are considered presently to be extremely essential for their contributions in the area of Fiqh and Hadith.

9.9.2 MADHAB OF IMAM JAFAR

Though the Shi'ah Imamia is also called Jafariah, this does not mean that the sole source of the Shi'ah Fiqh is Imam Jafar. It is mixed with others. The Jafariah Madhab is composed of Fiqh from other people such as Qumi, Tousi and Qulani. Thus, it is very hard to verify what was reported by Imam Jafar. Among the Jafariah claims are:

A. The Imams were appointed by the Prophet , namely Ali (RA) and his descendants. The twelve Imams are as follows:

1) ALI
2) HASAN
3) HUSSEIN
4) ALI ZAIN-UL-AABIDEEN
5) MUHAMMED AL BAAQIR
6) JA'FAR AS-SAADIQ (6TH IMAM)
7) MUSA AL-KAZIM
8) ALI AL-RIDA
9) MUHAMMAD AL-JAWAD
10) ALI AL-HADI
11) AL HASAN AL-ASKAREE
12) MUHAMMAD BIN AL-HASAN (12TH IMAM)

B. Imams are infallible

C. Imams have qualities which elevate them above the level of Prophets. In the words of Ayatollah Khomeini: “The Imam has an exalted position, an elevated rank and a creational viceregency (caliphate) to whose sovereignty and dominion all of the atoms of the universe yield and obey and, among the basic tenets of our Madhab is that the Imams have a position which cannot be attained by either an angel close or a commissioned Prophet. Furthermore, based on the narration’s and Hadith which we have, the greatest Prophet and the Imams existed before this world as lights which Allah made to encircle His throne.” (Khomeini, Al-Hukoomah al-Islamiyyah p. 52)

D. Tuqiyyah is allowed. Tuqiyyah states that a Muslim is allowed to hide whatever he believes in due to certain circumstances. The Jafaris claim that Imam Jafar said: “It (Tuqiyyah) is my Deen and the Deen of my forefathers” about Tuqiyyah.

E. Some of the Jafaris claim that the 12th Imam was born and was hidden in his early childhood. However, Al-Kulaynee, in his book Al Kafee, reports that the 12th Imam’s father died before his birth. The pregnant period passed and the expecting mother realised that she was actually not pregnant, and so the 12th Imam was never born.

These are but a few of the opinions of those who claim to follow the Madhab of Imam Jafar. Let us now study his life to determine if such claims were actually from Imam Jafar.

Imam Jafar as Sadiq bin Muhammed al Baqr (80 AH to 148 AH) was born in Madinah and is the nephew of Imam Zaid and grandson of Zain Al-Aabideen. The Shi’ah consider Imam Jafar as the sixth Imam. His father Muhammed Al-Baaqir used to be approached by people like Safyan Ath-Thawri, Sufyan bin Ayaynah and Abu Hanifah in their quest for knowledge. Al Baaqir highly respected Abu Bakr, Umar, and Uthman (RA), and he used to say: “He who does not recognise Abu Bakr and Umar is ignorant in the Sunnah.”

In another occasion he told his student Jaabir Al Ja’fee: “O Jaabir, I know that some people in Iraq claim that they like us, but they try to undermine Abu Bakr (RA) and Umar (RA) claiming that I instructed them to do so. Tell them that indeed, I denounce them for the sake of Allah, and if I were in charge, by Him in whose hands is the soul of Muhammed, I would slaughter them and shed their blood in order to get closer to Allah. May the intercession of Muhammed not cover me if I do not ask Allah to forgive both Abu Bakr and Umar and give them both His mercy. Allah’s enemies are absent minded and neglectful of them.”

Muhammed Al-Baaqir used to do Tafseer of the Qur’an, report Hadith whether the reports came through Ahl-ul-Bayt or from the other Sahabah (RA) without distinction. He was actually married to the granddaughter of Abu Bakr As-Siddiq, and Imam Jafar was born from this marriage. This means that his mother’s line ended with Abu Bakr (RA) while his father’s ended with Ali bin Abi Talib (RA).

Imam Jafar grew up in Medinah where the Sahabah (RA), their traditions and works remained and where the Tabi’een used to live. He used to stay close to his grandfather Zain ul-Aabideen, where the Tabi’een would come to discuss issues of Islam with Zain.

Therefore, Imam Jafar would take from both the Tabi’een and from Ahl ul-Bayt. His mother was also the daughter of Qaasim bin Muhammed bin Abu Bakr, one of the seven great Tabi’een, whom people like Imam Malik used to study. This shows that Imam Jafar had a wide and comprehensive understanding of Islam.

With the death of his father, he continued seeking knowledge. He used to study in depth, the opinions of different scholars, and after a long debate with Abu Hanifah, Abu Hanifah declared: “The most knowledgeable person is the one who is the most knowledgeable of their differences,” referring to Imam Jafar. Many scholars such as Imam Malik and Abu Hanifah used to sit and take reports from him.

IMAM JAFAR AND PUBLIC LIFE

Jafar witnessed at an early age, his uncle’s move against the Ummayyad Khaleefah. he realised how his followers had let him down. Therefore, he was able to develop a complete image about the people who were calling themselves the Shi’ah. Later on, in the Abbasid Khilafah, since they were also from Bani Hashim, it was expected that the situation would change for the better with Ahl ul-Bayt.

However, when some of Ahl ul-Bayt rebelled against the Abbasids another massacre occurred and another era of persecution was witnessed by Imam Jafar. So we find him trying to keep away from the political life as much as possible, and he never claimed the Bay’ah for himself. However, this does not mean that he did not have nor develop political opinions. In his era, the extremist opinions of Shi’ah appeared. Such ideas included that the Sahabah (RA) being Kuffar, the slandering of Abu Bakr and Umar (RA), and claims that such ideas were from Jafar and Imam Al

Baqir. Also in his era, the Khattabiyyah, another deviant group, emerged.

The Khattabiyyah movement was developed by a Persian named Abul Khattab, who claimed Prophethood. Imam Jafar took the responsibility of clearing the mess being purported by the Khattabiyyahs which caused him to suffer a lot in this cause. For example, it was reported that the Khaleefah Al Mansoor summoned Imam Jafar to him, based on reports that Imam Jafar was collecting Zakah on his own. He later found that this claim was false and was probably spread by the enemies of Imam Jafar.

FIQH OF IMAM JAFAR

Beside his struggle to clean up the mess of the deviant people, Imam Jafar also made great contributions to Fiqh and Hadith. The Fiqh of Imam Jafar is considered to be one of the Fiqh from the Sunnah. However, there are some people who claim themselves to be Jafaris who try to present a different picture of Imam Jafar.

Al Kulaynee, in his book Al Kafee, claims that Imam Jafar has a special ‘Ilm which was carried from the well of the Prophet to Ali (RA), and then to other Imams, arriving to Imam Jafar, who then transferred it to the remaining Jafari Imams. This special knowledge Al Kulaynee called Al Jafr. This Jafr gives to the Imam who carries or has it, knowledge of the Ghayb or the unsensed, and it seems as if this claim actually came from Al Khattabiyyah.

Such claims are not at all expected or suspected to be from the honourable and trustworthy Imam Jafar, especially when we realise that the reporter, Al Kulaynee, purports claims that the Qur’an was tampered with. It is clear that these heretic claims attributed to Imam Jafar and Imam Zaid are false, and that these honourable and trustworthy Imams would not have said such things.

Finally, the Muslim Ummah has witnessed turmoil throughout its history. We now have to come to realise that blaming each other for the division of the Ummah is not the answer to our current problems. The Muslim Ummah has to agree on the issues of Islam that are undebatable and it has to realise that there are issues where it is natural for differences to arise, and so room has to be given for those differences.

The Ummah has to agree that there is no God but Allah (SWT) and that Muhammed is His last and final Messenger; that no revelation was delivered to anyone else after him; that he did not hide any aspect of the Message nor did he give parts of it to a special elite.

The Muslim Ummah must realise that it must be ruled by Islam, and that the Islamic State should adhere to the texts of Islam, ie Qur’an and Sunnah, and that it must deal with everyone from Islamic point of view, regardless of race, colour, sex, sect, or religion.

The Islamic State and the Khaleefah is not a theocracy, the Khaleefah is not God’s representative in earth, and infallibility is a prerequisite for Prophethood because it cannot be imagined that the Prophet (SAW) could make a mistake in delivering the Message. The Khaleefah does not need a prerequisite of infallibility since his role is to only implement Islam, which was already completed and sealed with the death of the Prophet (SAW), without any room for deletion or addition.

CHAPTER 10.0

DO WE NEED A NEW SCHOOL OR MADHAB ?

Some claim that it is mandatory to adhere to one Imam or one school of Fiqh. This is completely wrong since we are ordered to follow Islam and not to one specific human being. And the person who meets the requirements of Ijtihad does not have to adhere to one specific school of thought. Even if someone is not a Mujtahid, he does not have to follow one specific school. rather, each individual is ordered to follow the Shariah which is extracted or deduced by Mujtahids. Consequently, the adherence is to the Shariah and not the Imam or the Mujtahid. This point was emphasisied by each of the scholars and Imams.

On the other hand, the claim that we need a new school of Fiqh due to the current situation of the Muslim Ummah is unfounded. Since what is really needed is the application of Islam in a comprehensive way, and not just to develop another school among the other already existing schools of Fiqh. There are however, two factors that must be kept in mind.

1) New problems emerging daily, in every era and every generation, and that
2) The Ummah is ordered to follow the divine rule to solve any problem.

These two factors require therefore, that every generation of the Muslim Ummah must have at least one Mujtahid amongst them in order to address the newly arising problems. In order to deduce the Hukm Sharii, this Mujtahid does not have to discuss old problems since they are already addressed. Therefore, in this regard, the need is for Mujtahids to meet the requirements of Ijtihad, in order to address new problems and not necessarily form a new school of thought.

However, the presence of vast numbers of Mujtahids among the Ummah to find solutions to the newly arising problems was greatly reduced when the doors of Ijtihad were closed. This tragic event took place after the sacking of Baghdad in the Seventh Century Hijri. This led to a problem in the Ummah because closing the door of Ijtihad resulted in very few people who could perform Ijtihad. Thus the newly arising problems were not being solved through the Shariah.

The closing of the doors of Ijtihad resulted in the development of various philosophies concerning the status of the Ummah in its adherence to Islam. These philosophies can be summarised as follows:

Some people started issuing opinions concerning the new problems, from their own minds, without any Daleel or specific methodology of conducting Ijtihad.

Others prematurely jumped to answers without acquiring the necessary prerequisites for Ijtihad, claiming that Ijtihad should not be closed and that the current situation provided everyone with the chance to perform Ijtihad.

Others began undermining Ijtihad, claiming that every issue is debatable and therefore it is up to the individual to pick and choose whatever is most convenient.

All of these claims mentioned above are invalid because they caused Muslims to start taking their desires, wishes, intellect, or someone else’s intellect as a reference, while we are ordered to take Islam as the one and only reference.

The doors of Ijtihad should not have been closed because without Ijtihad new problems would not be addressed by the Hukm Sharii. Yet, at the same time the doors of Ijtihad should not be flung open without any restrictions, controls or requirements. There are actually many requirements to be met in order to meet the qualifications of a Mujtahid, including sincerity and justice.

Others began taking advantage of the existence of the many schools of thought by shopping around for the most convenient opinion and compiling strange verdicts of each Mujtahid. These people went to each Madhab separating the lawful opinions from the unlawful things of the Madhab. They took the lawful verdicts, leaving the unlawful, until ending up with a new Madhab where everything is lawful and nothing is unlawful. This action is a major deviation from Islam.

Imam Al-Bayhaqee reported:

“Isma’eel Al Qadee said: ‘One day I entered to Al Mu’tadid, one of the Abbasid Khaleefahs, and immediately he showed me a book to read. I found that the author had compiled in it, the strange sayings of every Alim. So I told the Khaleefah that the author of this book is a heretic. The Khaleefah

asked why this was so, and I told him that those sayings were not presented by the scholars as they are presented in this book. He who legalised the Mu'tah marriage did not legalise singing, while he who legalised one action would not legalise another action. Additionally, each Alim has strange opinions, so if one would compile the pitfalls of all the Imams, and adopt them, then the Deen would be lost. The Khaleefah then ordered the book to be burned."

Imam Al'Awza'ee said: "he who traces the strange opinions of the scholars is out of Islam. You would find a scholar with a lot of knowledge and value, and also with a pitfall. So if a person was to collect the pitfalls of all the scholars and form a new Madhab, then what kind of 'Ilm would you have?'" (Salman Al Udeh, Who has the right to make Ijtihad, p. 13).

Others claim that having different Madhab is wrong and that we need to reunify all of the Madhabs and come under one single Madhab, completely free from sectarianism and firmly based on sound scholarship. This, they claim, would be the prerequisite toward reunification of the Ummah and then after this, would we look toward establishing the Khilafah.

The presence of the many Madhaib was not in itself an objective. The objective is to understand the rules in order to execute them. The understanding of the text leads to different opinions, which leads to different Madhabs. Due to reasons listed in section 9.3 (The Reason for Differences of Opinion Among the Mujtahideen), there exists legitimate differences amongst Mujtahideen. Trying to eliminate the possibilities of having more than one understanding goes against the nature of Islam, and the nature of human beings, which Allah (SWT) created.
Those calling for this single Madhab are in fact adding a new Madhab to the already existing ones. This is due to the fact that a person might disagree with this new Madhab, for valid reasons, and would finally adhere to his understanding. It should be understood that sovereignty belongs to the Islamic legislative sources, which came from the Wahiy. If everyone keeps this idea in mind and is ready to abandon his own opinion in order to adopt an opinion based on the Daleel, the problems would be eliminated.

If we study the numerous examples during the era of the Sahabah (RA) we can find that in the days of Abu Bakr (RA), there were differences among the Sahabah (RA). However, none of them postponed working for the Khilafah until all opinions were melted into one single opinion. Actually they realised that, what was needed more than anything else, even more than the immediate burial of the Prophet (SAW), was to elect a Khaleefah who would take care of their affairs by implementing all of Islam, thus establishing an environment in which the society would be able to cope with any issue that it is faced with.

Similarly, what is needed presently is this same authority which establishes and implements Islam. However, as long as the Ummah is preoccupied with calls such as working to unite under one new Madhab, which is a call to keep and prolong the rule of Taghoot, the Ummah will continue to be disunited, misdirected, with its problems continuously multiplying. With no mechanism to solve its problem, the Ummah will continue to be manipulated by those who rule over it with the rules of Kufr.

CHAPTER 11.0

TAQLEED

Taqleed linguistically means to follow others without thinking. As a juristic term it means to follow a Mujtahid's Ijtihad without comprehending the Daleel. In other words, the Muqallid (a person who practices Taqleed) may or may not know the Daleel. In addition, one may not know the reason for using the Daleel even though they know the Daleel.

There are two types of Muqalid:

A. **Muttabi'a** is the follower who acquaints himself with the Daleel (evidence) used by the Mujtahid to arrive at the Ahkam but he does not have to comprehend the reason for using the specific Daleel.

B. **Ammi** is one who follows a Mujtahid's Ijtihad without asking for a Daleel.

11.1 DALEEL FOR PERFORMING TAQLEED

"We have not sent before thee but men whom We reveal to them. So ask the people of knowledge if you know not". (TMQ An-Nahl: 43)

This Ayah was revealed in response to the disbelievers' argument that Muhammed (SAW) was a human, but the meaning is general in the Arabic language; the meaning is that Allah (SWT) orders those who do not know to ask those who know. Hence, Taqleed only in the Hukm Sharii is allowed for every Muslim. This understanding is further supported in the next paragraph by the incident narrated by Jabir (RA).

Jabir (RA) has narrated that one man suffered a wound to his head. Whilst sleeping he had a wet dream. He asked the companions if he could make Tayamumm. They said that he had no excuse for not performing Ghusl. After performing Ghusl the man died. When the Prophet (SAW) was informed of the incident he (SAW) said:

"Verily it was enough for him to do Tayamumm, to place a piece of cloth on his head, which he should then wipe (Mas'h) and then for him to wash the rest of his body". He (SAW) then said: *"They (the companions) should ask if they do not know"*. (Abu Daoud, Maja, Ahmad)

Thus, the Prophet (SAW) made it very clear to the companions that they should ask about the ruling if they are not aware of it.

11.2 MUSLIMS MUST ASK FOR DALEEL

Having given the Daleel for the permissibility of practicing Taqleed in Islam, it is crucial to point out that the follower must, when an issue confronts him, ask about its Hukm and Daleel. Our worship includes the pursuit of knowledge. As slaves of Allah (SWT) we must know Allah's rule for every action we perform.

Narrated by Abdullah bin Amr: I heard the Prophet (SAW) say:

"The Prophet (SAW) said: "Allah does not remove the 'Ilm after it was given to you, rather the 'Ilm would be removed with the death of the 'Ulema. Then some people, who are ignorant, will start giving their Ra'ee based on their desires and they are misled and will lead the Ummah astray". (Bukhari & Ahmad)

For Muslims to avoid the consequence of this Hadith, they must ask for a Daleel before performing Taqleed.

11.3 TAQLEED IS NOT PRACTICED IN THE AQEEDAH (BELIEF)

It should be clear that the subject of Taqleed is limited to the Hukm (rule) and does not include the Aqeedah (Belief). It is forbidden to make Taqleed in the creed, ie Aqeedah. Allah (SWT) says:

"And if they said to them follow what Allah has revealed, they said but we follow what our fore fathers left for us. Even if their fathers understood not, and were not guided". (TMQ Al-Baqarah: 170)

11.4 MUQALID SHIFTING FROM ONE OPINION TO ANOTHER

Sometimes it occurs to a person that he can choose between two rules derived from the Ijtihad of two Mujtahideen. For example, does touching one's wife break the Wudhu? Imam Shafii says yes. Imam Abu Hanifah says no.

Both opinions are based on the Daleel. Some say that Islam is easy therefore choose the easiest. After all both are Islamic opinions. To follow one of the opinions because of one's desires is totally haram (forbidden). Because following an Islamic opinion means following the Hukm Sharii. The obedience to Hukm Sharii is not based on hardship, easiness or benefit. How then does a Muqalid choose between two Islamic opinions?

Allah (SWT) says:

"If you dispute in a thing return it to Allah and the Prophet" (TMQ An-Nisa: 59)

The Muqalid should return to Allah (SWT) and the Prophet (SAW). In practice, it means choosing the Mujtahid whom he is convinced with as having the correct ruling for the issue. Choosing the correct Mujtahid can be achieved through:

Studying the opinion of the Mujtahideen and following the one that is most convincing. If a Muqalid does not know the evidence or is unable to verify the strength of the evidence, the best qualification to look for in a Mujtahid is a high degree of knowledge and Taqwa.

As a note of caution, it should be understood that one is not making Taqleed to the personality of the Mujtahid himself. If one follows a Madhab, one is not following a founder because of his personality, but because one believes that he had the correct understanding of Hukm Sharii on the issue. One must realise that he is obeying the Hukm Sharii not Imam Abu Hanifah or Imam Shafii.

Following the Ijtihad of a Mujtahid is permitted in Islam. This is supported by Qur'an, Sunnah, and Ijma as-Sahabah. Throughout our history the Muslims have been practicing Taqleed, to the extent that at one stage the door of Ijtihad was closed and everyone was making Taqleed. This step was wrong because the existence of Mujtahideen in the Ummah is Fard (obligatory).

The problem we face today is not the problem of Taqleed, but the problem of ignorance. Even if everyone reaches a very high level of Islamic knowledge, some people will still be practicing Taqleed as happened during the time of the Sahabah (RA) and Tabeyeen.

We acknowledge that the loyalty to the Madhab has resulted in many problems, but this is a fault of the people's ignorance and not the existence of the Madhab. If the Madhahib were abolished and everyone was forced to make Ijtihad by themselves, the Muslims would be lost. In the same way that not all people are capable of becoming surgeons or lawyers, we cannot expect everyone to reach the level of a Mujtahid.

Taqleed is a necessity for those who are not capable of extracting the Hukm (ruling) directly from the text. This matter applies on all Muslims who do not know the Arabic language, Fiqh, etc.

Nevertheless, three crucial points need to be made on the subject of Taqleed:

A. Taqleed should not be practiced with any sense of partisanship to a particular Madhab. It is nothing more than the adoption of a particular school of thought. No one can or should claim that a particular Madhab is the only Islamic Madhab or that it has supremacy over others.

B. The obedience is to the Hukm Sharii and not to a Mujtahid.

C. Muslims should be encouraged to acquire the skills necessary to perform Ijtihad and thus should be encouraged to learn the Daleel for the rulings they are following. This will provide Muslims with knowledge in Fiqh as well as the action itself. Allowing Taqleed should not be taken as a license for endorsing ignorance or discouraging Muslims from enriching themselves in acquiring the tools necessary for making Ijtihad.

CHAPTER 12.0

TOPICS RELATED TO ISLAMIC JURISPRUDENCE

12.1 WAHI'Y

The Qur'an was revealed unto the Prophet (SAW) by Angel Gibrael (AS). The angel came for the first time when Muhammed (SAW) was in the cave of Hira and revealed to him (SAW) Surah al-Alaq. During the early periods of the revelation, Prophet (SAW) used to move his (SAW) lips quickly in order to catch up to the words to memorise it, while Gibrael (AS) used to recite it. Thereupon, Allah (SWT) revealed:

"Move not your tongue (repeating the words of revelation) for behold it is for Us to gather it (in your heart) and to cause it to be read (as it ought to be read). Thus, when We recite it follow through its wording (with all your mind) and then behold it will be for Us to make its meaning clear." (TMQ Al-Qiyamat: 16-19)

Neither Muhammed (SAW) nor Gibrael (AS) used to control the timing of the revelation. Muhammed (SAW) once asked Gibrael (AS) why is it that you do not visit more often?

The following Ayah was revealed in response to this question,

"We do not descend but by the command of your Rabb. To him belongs what is before us, what is behind us, and what is between. And your Rabb never forgets" (TMQ 19:64)

Gibrael (AS) used to come every year for the purpose of listening to the Qur'an from Muhammed (SAW) and checking the memorisation. In the year in which Muhammed (SAW) passed away, Gibrael (AS) went to Muhammed (SAW) twice to listen to his (SAW) recitation.

12.1.1 FORMS OF WAHI'Y (REVELATION)

Although the word Wahi'y (revelation) was used linguistically in various meanings in the Qur'an, as a term it means:

Allah's (SWT) teachings revealed through a medium to one of His Messengers.

The Wahi'y could mean the speech of Allah (SWT) or could mean the process of relaying it to the Prophets, or the angel who used to carry the Message from Allah (SWT) to the Prophets.

Those who claim to be Messengers must provide proof that they have actually received the revelation. This proof is called Mu'ajizah or miracle. Miracle is the actual altering of one or more of the natural or universal laws. Since any such altering can only be achieved by the Will of Allah (SWT), if a person is imbued with any such ability then such a person could only have done so by the Will of Allah (SWT). This would prove that whatever he has was sent by Allah (SWT). Regarding this issue, Allah (SWT) says:

"It is not fitting for a human that Allah would speak to Him by revelation or behind a veil or by sending of the angel of revelation to reveal, with Allah's permission, what Allah wills." (TMQ Ash-Shura: 51)

The Ayah mentions the three forms of revelation:

A. Talking to a prophet behind a veil. This happened to Musa (AS)

   "And to Musa Allah Spoke" (TMQ An-Nisa: 164)

   This also happened to Muhammed (SAW) once and was mentioned in Surah An-Najm: 5-10

   "He was taught by one Mighty in Power. Endued with Wisdom: For he appeared (in stately form). While he was in the Highest part Of the horizon. Then he approached And came closer, And saw at a distance of but bow lengths or (even) nearer. So did (Allah) convey the inspiration to His Servant - (Conveyed) what He (meant) to convey" (TMQ An-Najm: 5-10)

B. Relaying the meaning to the Prophet (SAW) either while he is awake or sleeping (dream)

C. Sending of the Angel Gibrael (AS) himself:

   "With it comes down the truthful spirit to your heart." (TMQ Ash-Shura: 192-193)

Gibrael used to come in the following forms:

1. The loud ringing of a bell, heard only by the Prophet (SAW). The Prophet (SAW) says:

   "Sometimes the Wahi'y comes like the ringing of the bell and this is the hardest of all. When this state passes, I grasp what was revealed." (Bukhari)

   When this would happen, those who were around the Prophet (SAW) would realise the presence of the Wahi'y without being able to sense or comprehend it. It was reported on the authority of Ayesha (RA):

   "I saw the Prophet (SAW) once receiving the revelation on a very cold day and noticed the sweat dropping from his forehead once the revelation was over."(Bukhari)

2. In the shape of a man.

   "And sometimes, the angel would come in the form of a man."(Bukhari)

3. The angel would come in the form of his original shape, as it was the case at the first time of the revelation.

12.1.2 DIFFERENCES BETWEEN THE REVELATION OF QUR'AN AND SUNNAH

Although the Wahi'y has different forms, the Qur'an was revealed directly through the angel of revelation, Gibrael (AS). It was never revealed to the Prophet (SAW) by a dream or any other means. The Sunnah, however, can be revealed to the Prophet (SAW) through any of the aforementioned forms of al-Wahi'y. Needless to say, all forms of Wahi'y have the same validity. The Prophet (SAW) said:

"One of you who while reclining says, 'this is the book of Allah (Qur'an), what is in it from that is halal, we'll use as halal, and what is in it from the haram, we'll take as haram'. But whoever delivers from me a Hadith and he lies in it, he has told a lie on Allah and His Messenger...." (Both of the above mentioned Ahadith are reported in many sayings by Abu Daoud, Ahmad and many others).

The Qur'an and Sunnah are the only two ways by which Allah (SWT) has chosen to reveal Islam. The revelation can be of two kinds:

A. By the word and meaning
B. By meaning alone.

The Qur'an was revealed with the words and its meanings. For example, the words **Maliki youm midiin** in Surah al Fatiha is revealed by Allah (SWT) with the words and its meaning. The Prophet (SAW) did not insert or delete any part of the Qur'an. On the other hand, the Sunnah is revealed by the meaning and the Prophet (SAW) expressed it in his (SAW) own words.

12.2 ROLE OF AQL

To some, the subject of the role of intellect in Islam seems quite bizarre. Unfortunately, the lack of awareness about Islam yields such an understanding. Through researching the Qur'an and the life of the Prophet (SAW) it is apparent that much emphasis was placed on this subject by the revelation. It is natural for the revelation to address this subject because in order to formulate a specific behaviour, the individual's way of thinking must be addressed. When the revelation addressed this crucial issue it did so in such an effective manner that it took only one Ayah for the entire society to abstain from alcohol.

Prophet Muhammed (SAW) not only clarified matters of law to the people that dealt with their actions but also directed their intellect and clarified its limitation.

This is evident when the sun eclipsed during the time of the prophet (SAW) on the same day that his (SAW) son Ibrahim died. When people suggested that the sun eclipsed because of the Prophet's (SAW) son's death, he (SAW) told them that the sun and the moon are signs from Allah (SWT). They do not eclipse for someone's death or birth; therefore there is no relationship between the two events.

The method of directing the intellect and sound principles of reason were at work when the Prophet (SAW) cleared the misunderstanding of a group of people when they said that rain occurs due to the influence of the star, telling them that the Lord of the star, Allah (SWT), causes the rain to occur. These are just two of the many examples addressing the role of the intellect.

Having understood that Islam directed the people's intellect, the next question which arises is what exactly is the position of the intellect in Islam?

In Islam the role played by the intellect is a very significant one. The intellect is used to understand and accept the Islamic Aqeedah. (doctrine) and is the only acceptable method to enter Islam. Islam compels the use of the intellect to believe in Allah (SWT) and forbids imitation (Taqleed) in Aqeedah. There is no concept of blind faith as it occurs in Christianity and other religions.

Islam provides rational evidences to prove the existence and the Oneness of Allah (SWT), the Khaleefah of Muhammed (SAW), and that the Qur'an is the word of Allah (SWT). Thus the foundation of Islam is built upon conviction through the intellect. Through this sound proof, the intellect and the heart are satisfied and devoid of any blind faith and superstitions.

Since the authenticity of the Qur'an and Prophethood of Muhammed (SAW) is built upon the intellect, the belief in beings such as the angels and Jinns, or descriptions of heaven and hell are based upon the authenticity of the Qur'an and the Prophethood of Muhammed (SAW).

Once the Aqeedah of Islam is arrived at intellectually, the intellect then plays a different role. It plays a role of only understanding the issue and the revelation and then applying the revelation to the issue. The intellect uses the revelation as a source to derive rulings on any issue, from Wudhu (ablution) to the foreign policy of the Islamic State.

It is important to realise that the intellect cannot be used to conjure up a reason for a ruling, unless the reason is mentioned in the text. Claiming a reason for any ruling implies that we can comprehend what Allah (SWT) intended for that ruling, which is impossible. For example, we cannot use the intellect to infer a reason for why we perform Wudhu. The intellect would probably lead one to assume that it is for the sake of personal hygiene.

However, if water is not accessible then we are supposed to do Tayamum (a series of actions requiring one to wipe themselves with dust). If the reasoning behind Wudhu is cleanliness, then why would Allah (SWT) order us to wipe ourselves with dust if water is inaccessible?

The proper use of the intellect can be seen in the actions of the Sahabah (RA). During the battle of Badr the Prophet (SAW) had stationed the army at a certain location. Khabab bin al-Mundthir (RA) inquired from the Prophet (SAW) whether his (SAW)'s decision was based on the revelation or a tactical decision?

Prophet (SAW) replied by saying that it was a tactical decision. Upon this Khabab bin al-Mundthir said that the location was a wrong one. From this incident we can see that the Sahabah (RA) recognised the fine line between the revelation and the intellect. They never used their thinking to pass judgments on the revelation.

In other ideologies the intellect plays a role which it cannot fulfill. In Western democracies, intellect is given the unlimited role of organising man's life; however, it is subject to biases, disparity, differences, contradictions, and the influence of the environment (lobbyists). Consequently, man-made systems suffer from these same biases, disparity, differences, contradictions, and influence. Whereas the intellect in Islam is used not to legislate laws but to understand the revelation and to apply it.

With regard to the intellect, Muslims need to have the same awareness of the fine line between revelation and Aql that Khabab bin al-Mundthir (RA) had. Unfortunately, Muslims have begun to exercise their intellect to pass on the rulings given to us by Allah (SWT), eg Salat is good exercise, fasting is good for the body, etc. Furthermore, in some cases Muslims have started to prefer the ruling of man-made laws to those of the Creator of the Universe, Allah (SWT).

12.3 DOES THE SHARIAH APPLY ON NON-MUSLIMS ?

Allah (SWT) says:

"We have sent you not but as a mercy for <u>all</u> creatures." (TMQ al-Anbiyya: 107)

"We have sent you but as a Messenger to all mankind, giving them glad tidings, and warning them against sin, but most men know not." (TMQ Saba: 107)

These Ayah are very clear that the Prophet (SAW) was sent for the whole humanity and not just for the Muslims. Furthermore, the Prophet (SAW) applied Islam on the non-Muslims In the Islamic State. Thus, the non-Muslims were subjected to the same Islamic system of ruling, economics, punishments and judicial processes as Muslims were without any discrimination. However, the performance of prayer, fasting, etc. are only accepted from the Muslims since the prerequisite for performing these acts of Ibadah (worship) is to be a Muslim.

Finally, based on Islam, the Non-Muslims are allowed to practice their own religion, marital, divorce affairs according to their beliefs. Furthermore, they are treated in the matters of food and clothing according to their religion, within the rules of the Shariah.

12.4 IS PROPHET MUHAMMED (SAW) A MUJTAHID ?

As defined earlier, a Mujtahid is a person who studies the problem thoroughly and seeks the solution from the sources of Shari'ah. However, the Messengers, bring the Message which includes the

Shariah. There is an apparent difference between the two terms. One brings the Shariah while the other goes to the Shariah to extract rulings. Also, Muhammed (SAW) was guided by the revelation. Allah (SWT) says:

"Nor does he speak of his desire. It is no less than revelation sent down to him." (TMQ An-Najm: 3-4)

The Mujtahideen are not guided by the revelation because there is no more revelation after Muhammed (SAW). A Mujtahid's Ijtihad can be wrong. The Prophet (SAW) says:

"Whosoever does Ijtihad and errs therein shall have one reward. And whosoever performs Ijtihad and is correct shall have a double reward." (Bukhari & Muslim).

If Prophet (SAW) is considered a Mujtahid then there is a possibility of him (SAW) making a mistake in delivering the Message and then the revelation corrected him (SAW). Then this implies that in the time it takes for the revelation to correct the matter, the Message delivered by Muhammed (SAW) was wrong which is completely absurd.

The only arguments which are brought in support of the Prophet (SAW) being a Mujtahid are:

When a blind man came to learn Islam from him (SAW) and Allah (SWT) in this regard addressed the attitude of the Prophet (SAW). Allah (SWT) says:

"(The Prophet (SAW)) frowned and turned away, because there came to him the blind man (interrupting). But what could tell you per chance he might grow in purity? Or that he might receive admonition and the reminder might profit him? As to the one who regards himself as self sufficient, to him does you attend. Though it is no blame to you if he grows not in purity. But as to him who came to you striving earnestly and with fear (in his heart) of him as though unmindful. By no means (should it be so) for it is indeed a Message of remembrance." (TMQ Abasa 1-11)

The Ayah is addressing what happened with Abdullah ibn Ummi Muktum when he came to the Prophet (SAW), wanting to learn the Qur'an while the Prophet (SAW) was giving Dawah to one of the heads of Quraysh.

In this situation the Prophet (SAW) had two options, either to attend to Abdullah ibn Ummi Muktum or continue the Dawah with the heads of Quraysh; he (SAW) chose the latter. Both actions were Mubah (permissible) and Allah (SWT) preferred for him (SAW) the other option. Moreover, the structure of the Ayah does not indicate the Prophet's (SAW) choice as being Haram!

The other Ayah which is brought is during the battle of Badr:

"It is not fitting for a Prophet (SAW) that he should have prisoners of war until he has thoroughly subdued the land. You look for the temporal goods of this world. But Allah looks to the Hereafter. And Allah is Exalted in might, Wise." (TMQ al-Anfal: 67)

In the succeeding Ayah Allah (SWT) mentions that no sin was committed when the Prophet (SAW) took in prisoners for ransom.

"Had it not been for a previous ordainment from Allah, a severe punishment would have reached you for the (ransom) that you took." (TMQ al-Anfal: 68)

Again even in this incident the Prophet (SAW) had two options: either to keep on killing the Kuffar or to stop and take the Kuffar as ransom. He (SAW) chose the latter option, but Allah (SWT) preferred for him (SAW) to continue on killing the Kuffar in the battlefield. Thus, neither argument supports the claim that the Prophet (SAW) was a Mujtahid.

12.5 CAN FIQH BE CHANGED ?

Some "scholars" claim that there is no problem in changing the Fiqh due to the change in environment or circumstances. The proponents of this view give the following justifications:

A. Fiqh is human interpretation while the Shariah is Hukm Sharii which Allah (SWT) revealed. The Shariah is the Wahi'y (revelation) but Fiqh is open to different interpretations. Thus, Fiqh is not a revelation and can be changed.

B. Some rules in Islam are based on Urf (traditions); the emergence of new traditions would trigger a change in the Fiqh.

C. The Sahabah (RA) have changed some rulings of the Prophet (SAW). For example, if the camel was misguided the Prophet (SAW) recommended to leave it because it will find its own way. On the other hand, Umar (RA) asked the people to bring the lost camels to the Islamic State where the camels can be kept for the owners to claim them.

D. Imam Shafii changed his Madhab when he went to Egypt due to the new environment.

Some scholars went as far as to say that the Jizya can be canceled because in the past the non-Muslims didn't participate in the Muslim army, but now they are participating in the army and defending the land; therefore, they no longer have to pay Jizya.

Others expressed that the unity of the Muslim Ummah is not a must, and the reason that 52+ states exist is because of life's complexity. They arrive at the conclusion that we are no longer in need of the Khilafah because rules are subject to change.

Islam has come to organise and regulate man's organic needs and instincts. The rules for this regulation cannot be changed. But as knew problems arise, we need new rules, and this is the task of the Mujtahid. Carefully note that this is not considered changing the rules at all.

Fiqh is the totality of Hukm Sharii taken from the Islamic sources (Qur'an, Sunnah etc). Thus, Fiqh is not a body of man-made laws because it is based on these sources. Ijtihad is the process of understanding, studying, and analysing the texts and extracting rulings. Evidence from the sources of Shari'ah to justify the extracted ruling is an indispensable part of Ijtihad. The human effort in Ijtihad does not produce man made laws. The Mujtahid cannot take two different rulings for the same issue at the same time; however, he may later discover the misunderstanding of his Daleel and choose another ruling. Thus, there is no difference between Fiqh or Shariah.

The Sahabah (RA) did not change the Fiqh in any way whatsoever. What they did can be categorized as one of the following:

Applying a rule by having its daleel or changing a rule for another Daleel.

The Khaleefah has the responsibility for taking care of the Ummah's affair in any way he finds most effective. This may change from time to time. For example, Umar (RA) asked the people to bring the lost camel to the State authority. While, the Prophet (SAW) said to leave the camel and it will find its own answer. During the days of Umar (RA) the State was growing and someone had to take care of this matter. Since the Khaleefah is the caretaker of the Ummah, Umar (RA) asked the people to bring the camel to the state.

What Imam Shafii did was that he changed his methodology completely, this point was discussed earlier in the book.

If some rulings are connected with the Urf (custom), the ruling may differ from one place to another but this is not changing the Fiqh because the ruling still exists. For example, a custom might dictate that the dowry should not be mentioned. This is acceptable because the ruling to pay the dowry must still be carried out. In other words, if dowry was not mentioned in the contract, then the judge would look at the Urf (custom) of the city or village and compare the dowry of another woman with the similar status. Another example is of a worker employed without specifying the wage, then the judge would observe what the people paid for a similar job.

12.6 NEED FOR AN AMERICAN / BRITISH FIQH

The development of a Fiqh tailored towards the Muslims of North America has been of recent discussion in some Muslim organisations. The justification for "American Fiqh" is two fold. First, the argument is that the old Fatwas are no longer applicable and reinterpretations are necessary in order for Islam to be applicable to America. Secondly, that Muslims in America face problems which never existed before, and the solutions to these problems have to be applicable to those specific problems that are faced in America.

In two well known publications, Islamic Horizons and the Muslim Journal, the idea of an "American Fiqh" was discussed. Some of the points mentioned in the publications are the following:

In Islamic Horizons (Volume #17: Jan - Feb 1988) an article entitled "Legists, Law, and the Wild West" discusses,

1. The need for an "American Fiqh" to address problems faced in North America.

2. The gap of understanding existing between the scholars overseas and those in North America due to the nature of the problem faced by Muslims in America. Thus, the scholars from overseas are not qualified to issue rulings.

These points lead to the argument that Muslims need a new framework for a Fiqh oriented towards America. This is necessary in order to answer such problems as a woman accepting Islam while her husband remains a non-Muslim and issues surrounding adoption, child abuse, wills, inheritance, and burials.

In the Muslim Journal (May 6, 1994), an article by Imam Vernon M. Fareed entitled "Conference on Unity in Islamic Thought in America", discusses the establishment of a new Madhab as it was a topic of an Islamic conference in Ohio.

In that conference, Imam W.D. Muhammed suggested that all Muslims in his association have to make Salat in a uniform manner. It was agreed upon in the conference to research various areas of importance associated with Salat, such as the position of the woman when prayingbehind her husband, the number of Sunnah prayers to be performed before and after the Fard prayer, the Janazah prayer, Taraweeh prayer, etc. Many other topics, such as Tawheed and devotions, were also suggested for research.

The arguments used to justify "American Fiqh", such as the need for Ulema "groomed" in America or reinterpreting the Shariah so as to make it applicable in America are emanating from a defeated mentality and unIslamic perspective.

From the Islamic perspective, the locality of the Mujtahid does not validate or invalidate his Fatwa. This has never been a prerequisite for issuing a Fatwa. By definition, the Mujtahid, whether living in America or in the Sahara Desert, has to be versed in the Shariah as well as the problem before issuing any ruling. If a Mujtahid in Egypt was able to understand the problem correctly, his Ijtihad would be acceptable. Our discussion, therefore, should be limited to the ability of the Mujtahid rather than his locality.

An issue such as an American woman accepting Islam while her husband remains a non-Muslim is not a new issue. This problem occurred at the time of the Prophet (SAW) when his (SAW) daughter Zaynab (RA) accepted Islam while her husband remained a non-Muslim. Therefore, in order to solve this problem today, we need to go back to the legal texts and study them in order to acquire the Islamic ruling. This applies to all other issues as well.

With regards to issues involving adoption, wills, inheritance, and burial, these have rules which are discussed extensively in Islam and cannot be changed. As for the new problems, this requires a Mujtahid to extract rulings whether the problem happens in the East or the West.

Regarding the issues of Salat or Tawheed, which were mentioned in the American Journal, these are rules which are well defined and set. There are differences of opinion in performing the Salat, but this is only due to the fact that the Prophet (SAW) used to perform it in more than one way. Geography is an irrelevant issue when it comes to the method of the Salat.

The idea of an "American Fiqh" is an alien concept which seeks to distort the nature of Islam. The Shariah is being treated as a "Mickey Mouse law" rather than that of Allah, the Supreme. This is a result of a defeated mentality which seeks to change the Shariah to fir the society rather than changing the society to conform to the Shariah.

Does not the Seerah of Prophet Muhammed (SAW) inspire in us the motivation to change the circumstance to apply what Allah (SWT)ordered? If Muslims are allowed to reinterpret the Shariah according to the environment, we will no longer need the Shariah from Allah (SWT) to organise our lives. This amounts to nothing short of assuming the role of the Sharii (legislator), Allah (SWT).

Even though we have Hanafi, Shafii, Maliki and other schools of Fiqh, none of the founders of these schools developed their Fiqh based on their environment. This is a new idea propagated as a stepping stone towards a new Islam., one that is based on an "American Fiqh" and an American Aqeedah. The differences in Fiqh amongst the Mujtahideen was due to differential understanding of the text of the Qur'an and Sunnah, not the reinterpretation of the Shariah to conform with the environment.

The Muslim Ummah does not need an "American Fiqh" because the term itself is wrong. There is no Egyptian, Pakistani, American, British or Palestinian Islam in order to have a Egyptian, Pakistani, American, British or Palestinian Fiqh. **There is only one Islam and only one Fiqh!**

12.7 MINORITY FIQH

Some Muslims claim that since Muslims in the West are minorities, this constitutes grounds for establishing a Minority Fiqh. For instance, a preposterous claim is made that some of the rules of the "classical" Fiqh cannot be applied in an unIslamic Society, including the Riba.

First of all, to have a minority mindset is alien to Islam. If Prophet Muhammed (SAW) thought and acted as a minority to establish minority rights in Mecca we would probably not be Muslims today. The Prophet (SAW) called for the comprehensive establishment of Islam.

This was the attitude of the Prophet (SAW) from the very beginning of the Dawah. Thus, Muslims should not think of themselves as minorities but rather as carriers of a Message from Allah (SWT).

The Ahkam (rules) in Islam are of two types:
Rules related to individuals such as praying , fasting, etc. Every Muslim has to abide by these types of Ibadah whether Islam is applied or not applied in a

society and whether the person is living in Mecca or Paris.

Rules which cannot be applied except through the agency of the Khilafah State, such as applying the Hudud (punishment) collecting Jizya, etc.

It is not the responsibility of an individual to apply any punishment on behalf of the State. This principle applies to Mecca or Paris. Whether a person lives in the Islamic State or not, he has to abide by the rules related to individuals. However, living in a non-Islamic society does not signal a green light for Muslims to justify, patch, compromise, or alter Allah (SWT)'s rules. It should be clear to us that there is no justification for a Minority Fiqh.

As Muslims, we must have a deep rational conviction that Islam is from Allah (SWT) and therefore we must accept it in its totality. This fact should motivate us to live according to Islam and to call the people to apply Islam in the society, because Islam is not just composed of rules related to individuals but is a comprehensive way of life, the Deen-ul-Haqq.

CONCLUSION

Presently, the decline in the Muslim Ummah, whether it is political, economic, or intellectual, is due only one reason: the absence of Islam from our lives as a comprehensive ideology.

The societies in the Muslim world are organised by un-Islamic systems, sprinkled with a few Islamic rules related to marriage, divorce, inheritance, and Ibadah; while, laws related to ruling, economics, education, and foreign affairs, have no Islamic orientation.

As an example, the educational curricula, to which the Muslims are subjugated, are not designed to create the Islamic personality, whereby the individual judges and evaluates issues of life according to Islam.

On the contrary, those who graduate from the educational curriculum in the Muslim World limit their belief only to the spiritual aspect of Islam/ They view life based on pragmatism or benefit and consequently embark on actions rooted in these thoughts, while these actions should have been based on the Daleel from Islam.

Issues related to the Islamic Aqeedah itself, such as arriving at the rational conclusion in the existence of Allah (SWT), are omitted from the present day curriculum. This threatens to rip apart the very fabric which binds the Muslim Ummah together; the Aqeedah. This threat comes in the form of a discussion of Islam as a philosophical idea or a religion dogma, lacking the ability to address contemporary problems and occurrences.

The impact of all this has resulted in a crippling effect on the presentation and comprehension of the Fiqh. People in the Muslim World view the Fiqh in the same light that people in the West view theological or divinity studies ie as an easy discipline, studied by either the “religiously” inclined or by those who are not smart enough to study the sciences or technology.

This view of the Fiqh is the direct result of the deviant educational curricula present in the Muslim world. These examples are not only related to the educational system; rather, they pervade throughout the entire society, since the entire structure of the society is un-Islamic.

In the midst of this environment, how can the Ummah once again flourish? After destroying the Khilafah and then granting us pseudo-independence, the Imperialists made sure that the Muslim lands would remain ideologically and intellectually occupied. They achieved this by creating a gap in our personality whereby we would believe in the Islamic Aqeedah yet not view life based on it. Thus, losing the trust and confidence in the ability of Islam to solve our problems.

Consequently, it is not surprising that the educational curricula producing such confused Muslims are written by the international tool of our enemy, UNESCO, an agency of the United Nations.

Realising this, the highest priority of the Ummah must be to bring Islam back in our lives as a vibrant and comprehensive ideology. The total application and implementation of Islam will stop the current decline of the Ummah. This task must not be undermined or underestimated by the Ummah. It is a matter of life and death.

“O you who believe! Answer the call of Allah and His Messenger, when He calls you to that which will give you life; and know that Allah comes in between man and his heart, and that it is He to whom you shall return.” (TMQ Al-Anfal 8:24)

As mentioned earlier, we are fortunate to be from the Ummah of Muhammed (SAW). This pride and honour should stimulate, motivate, and mobilise us to work to regain the rightful status of the Ummah of Muhammed (SAW) as leaders of the World. An Ummah which brings to life the Ayah:...

“We have not sent you (O Muhammed) except as a Mercy to all the Worlds” (TMQ Al-Anbiyaa: 107)

This Mercy can only be presented to the humanity, when the Shariah is implemented in totality, embodied in a State.

GLOSSARY

Abbaasid:	The third major reign of Khilafah which began with Khaleefah Abul' Abbaas as-Saffaah (750-754 CE) and ended with the murder of Khaleefah al-Musta'sim (1242-1258 CE) at the hands of the Mongols.
Adl:	Justice, upright and just
Ahkam:	Rulings and laws
Ahl al Hadith:	(Lit. People of Hadith); a name given to the early scholars who relied mainly upon the interpretations of the revelation (Qur'an and Sunnah) and not applying Qiyas.
Ahl al Rai:	(Lit. People of Reasoning); a name given to the early scholars who used Qiyas and Istihsan extensively as well as the Qur'an and Sunnah.
Amir ul Mu'mineen:	(Lit. leader of the believers); a title for the head of the Islamic State.
Amm:	General, unspecified
Amr:	(Pl. awamir); a command to do something, matter, affair
Ansar:	(Lit. 'the helpers'); the early Muslims of Medinah who provided the Messenger of Allah (SAW) with the support.
Aqeedah of Islam:	(Lit. 'tightened like a knot'); a decisive and definite rational belief in the fundamentals of Islam.
Aql:	Intellect
Asbab al Nuzul:	The occasions / reasons of the revelations.
As-Shath:	A Hadith in which one credible reporter reports something that disagrees with other credible reporters.
Athar:	(Pl. Aathaar); saying or ruling of the Prophet (SAW), Sahabah (RA) or Tabieen. It is more general than the Hadith.
Aziz:	A Hadith reported by at least two individuals in every class.
Baya':	Business transactions.
Bayah:	The oath of allegiance to the Khaleefah.
Bayan:	Explanation, clarification
Bid'ah:	Innovation in matters of Ibadah.
Da'eef:	(Lit. weak) a Hadith not meeting the requirement of either Sahih or Hasan type of Hadith.
Dalalah:	Pertaining to the meaning of the text.
Daleel:	Proof, evidence
Dawah:	(Lit. 'invitation'); propagation of Islam.

Deen: (Lit. anything that is submitted or adhered to). Deen of Islam (Islamic ideology) - not to be confused with religion. Deen is a comprehensive way of life.

Dhaair: (Pl. Dhawaahir); the obvious literal meaning of a text from Qur'an or Hadith.

Dhimmi: Non-Muslims living under the authority of the Islamic State. They are considered as citizens of the State and given all the rights which every citizen of the Islamic State deserves.

Du'aa: (Pl. Ad'eyah); supplication to Allah (SWT).

Faili: Actions.

Fard: An obligatory action. If the individual performs the action then he is rewarded. Whereas, the failure to perform the action results in a punishment.

Fasiq: A Muslim who intentionally, repeatedly, and openly breaks the Islamic laws.

Fatwa: (Pl. Fatawa); an Islamic legal opinion issued by a reliable individual with / without mentioning the Daleel.

Fiqh: 1. Knowledge of the rulings of Shariah which are extracted with the legislative sources.
2. Synonymous with the term Shariah, ie all the Islamic laws.

Furoo': (Sing. Fara'); branches, such as in the Furu al-Fiqh, that is the branches of Fiqh, as opposed to its roots and sources (Usul al Fiqh).

Gharib: A Hadith reported by only one individual in one or more classes.

Had: (Lit. limit); prescribed punishment from Allah (SWT) for a sin.

Hadith: (Pl. Ahaadeeth); a report covering the sayings, actions or the approvals of the Prophet (SAW).

Hajj: A compulsory duty on all adult Muslims of sound mind and body once in a life time if they are economically able. Hajj can be defined as pilgrimage to the Ka'bah in Mecca in order to perform certain prescribed rites of worship.

Halal: An action or a thing considered permissible or lawful. Fard, Mandub, Makruh, and Mubah fall in the category of Halal since there is no punishment for any of these categories of actions.

Haram: A prohibited action. If the individual abstains from performing the prohibited actions then he is rewarded; otherwise, punished.

Hasan: 1. A Hadith which meets the requirement of a Sahih to a lesser degree.
2. A Hadith accepted by the majority of the Fuqaha and documented in reliable books of Fiqh (this definition is adopted by Al-Khatabi).

Hijrah: The period of migration by the Prophet (SAW) and the Sahabah (RA) from Mecca to Medinah in the year 645 C.E. The Hjrah marks the establishment of the Islamic State by the Prophet (SAW) and the beginning of the Islamic calendar.

Hukm Sharii: Address of the Legislator related to the actions of human being.

Ibadaah: Worship.

Ijma: 1. To determine
2. To agree upon something

Ijma al Mujtahideen: Agreement of the Mujtahideen of the Muslim Ummah of any period following the death of the Prophet (SAW).

Ijma ahlel Bayt: Agreement of the household of Prophet (SAW)

Ijma ahlel Medina: Agreement of the people of Medina.

Ijma al Ummah: Agreement of the Ummah on a matter at anytime past, present or future.

Ijma as Sahabah: The unanimous agreement of the Sahabah (RA) on a point of Islamic law. This form of Ijma is the only acceptable legislative source.

Ijtihad: Exhausting all of one's effort in studying thoroughly and seeking the solution from the sources of Shariah up to the extent of feeling an inability to contribute any more.

Ikhtilaf: Juristic disagreement.

Ilm ul Kalaam: A type of discussion related to the Islamic Aqeedah concerning Allah (SWT)'s attributes, Prophethood, etc. During the days of the Sahabah (RA), Muslims used to be confined by the Quranic methodology when discussing such topics. Some Muslims later started using Greek logic and its culture as a basis for the discussion of the Islamic Aqeedah. In this process Muslims began discussing issues beyond the scope of the intellect.

Imam: (Lit. leader). 1. A title for the head of the Islamic State.
2. The title of the one leading the congregational prayers.

Iman: The strong belief in the Islamic Aqeedah without doubt.

Islam: (Lit. submission, peace). It is the Deen revealed to Prophet Muhammed (SAW) for organising man's relationship with himself, his Creator, and with other human beings. Islam is addressed to all human beings.

Ismah: Infallibility, immunity from making errors.

Istihsan: Shifting from one Qiyas to another Qiyas due to a reason.

Jihad: Removing the obstacles which stand against the propagation of the Islamic Dawah to the people.

Jizya: A specific amount of money paid by non-Muslims living in the Islamic State to the State. It is collected only from those who can afford to pay it.

Khamr: (Lit. fermented grape juice). In Islamic law it refers to intoxicants including liquor, wine, beer, whisky, etc.

Kafir: (Lit. 'one who conceals the truth) legally a non-Muslim. A person who does not believe in Islam. Many situations can cause a person to be categorised as a Kafir. Some of these are denying a part of the Islamic Aqeedah or a conclusive Daleel. As an example claiming that Islam is not perfect and is not applicable in the 21st Century would make a person Kafir.

Khaleefah: (Lit. Successor); the head of the Islamic State.

Khabar: (Lit. news, report) synonym for Hadith.

Khilafah: The Islamic State.

Khulafa: The plural of Khaleefah.

Khulafa Al-Rashidun: The rightly guided Khaleefahs - the first four Khulafa: Abu Bakr, Omar, Uthman and Ali (RA).

Kufr: Non-Islamic concept

Madhab: (Pl. Madhaib); a school of thought related to Fiqh.

Makruh: Disliked action. The one who abstains from performing such an action is praised and rewarded, while the one who does it is not punished.

Mandub: A recommended act. The one who performs this type of act is rewarded while the one who abstains from it is neither blamed nor punished.

Mauquf: A Hadith where the Sanad ends with a Sahabi.

Marfu': A Hadith in which the Sanad leads to the Prophet (SAW).

Mash-hor: A Hadith reported by at least three individuals in every class.

Maslaha al Mursalah: Refers to accepting public interest in the absence of a legislative source from Qur'an or Sunnah.

Mah-thur: A prohibited action. If the individual abstains from performing the prohibited action then he is rewarded otherwise is punished.

Mawd'u: A fabricated Hadith.

Mu'addal: A Hadith which is missing two or more consecutive reporters.

Muallal: A Hadith whose Sanad seems to be fine, but due to some hidden reasons discovered by scholars of Hadith, it is discredited.

Mualaq: A Hadith which is missing one or more reporters whether at the beginning of the Isnad, in the middle, or in the end.

Mubah: A type of action in which the choice is left up to the person to do or not do.

Mujtahid: Person who can perform Ijtihad.

Mujtahid Mutlaq: Absolute Mujtahid; a Mujtahid who established an original method for Ijtihad such as Imam Abu Hanifah, Imam Jafar, Imam Shafii and others.

Munkar: 1. A Hadith in which uncredible reporters convey a message which is in disagreement with what was reported by credible reporters.
2. Any haram action.

Munqati: A Hadith which has interruption in the class.

Musnad: 1. A Hadith which has chain of reporters.
2. Any book of Hadith organised by the name of the Sahabi who reported it. As an example, Musnad of Ahmed.

Mufti: A scholar who gives legal rulings on an issue.

Muhajir: (Lit. emigrant); refers to the one who migrated from Mecca to Medina.

Munaadharaat: (Sing. MunaadHarah); a name given to debates between scholars of various Madhab on legal issues.

Munafiq: (Pl. Munafiqoon); one who pretends to be a Muslim while in fact disbelieves.

Mursal: A Hadith leading back to the Prophet (SAW) but missing the name of the Sahabi who reported it.

Mustahabb: Recommended.

Mutawatir / Tawatur: Is a transmitted Daleel by an indefinite number of people. Due to the large number of people reporting the Daleel, and their diversity of residence, reliability, and conviction, it is inconceivable that this Daleel could be fabricated.

Nabiy: Is a person who receives the revelation from Allah (SWT). The last and final Nabiy is Muhammed (SAW). Anyone who claims to be a Nabiy after Muhammed (SAW) is a Kafir.

Nafaqah: Monetary or material support, ie a father supporting his aged father.

Naskh: Abrogation, repeal.

Nass: A clear injunction, an explicit ruling.

Nafilah: A recommended act. The one who performs this type of act is rewarded while the one who abstains from it is neither blamed nor punished.

Qadee: (Pl. Qudaah): a judge

Qatal: Conclusive, definite.

Qawli: Saying, verbal.

Qiyas: An extension of Sharii ruling from an original case to a new case because of the equivalence of Illa (causes) underlying them.

Qur'an: (lit. reading). Allah's miraculous speech revealed to Muhammed (SAW) in Arabic and transferred to us by the Tawatur method.

Qudsi: A Hadith in which its Sanad leads to the Prophet (SAW) and the Prophet (SAW) is reporting it from Allah (SWT).

Rasool: Nabiy is anyone who receives a revelation from Allah (SWT). If this revelation is a new Message such as Islam then the Nabiy is given the additional title of Rasool.

Riwayah: Pertaining to narration or transmission.

Rukn: Pillar, essential ingredient.

Sahabah (RA): 1. A Muslim who saw the Prophet (SAW).
2. A Muslim who lived with the Prophet (SAW) for one or two years or participated in one or two Ghazwaa.

Sahih: A Hadith reported by an Adl and Dabeth (maintains accuracy of the report) person from another person of similar qualities till the end of the report.

Salat: (Lit. prayers) an Ibadah in Islam done in a defined manner with the intention of doing it.

Sanad: A chain of reporters leading back to the Prophet (SAW).

Sawm: Fasting.

Shariah: Composition of all the laws derived from the Islamic legislative sources.

Shirk: Associating partners with Allah by giving Allah's (SWT) attributes to created things or giving Allah the attributes to created things or giving Allah the attributes of created things.

Shurah: Mutual consultation.

Sunnah: 1. Prophet (SAW)'s way of life. Consists of the sayings, actions and silent approval of the Prophet (SAW).
2. Sunnah is also used to mean a Nafilah as opposed to Fard, a compulsory order.

Tabaqah: A class of reporters in the same generation, ie Sahabah (RA), Tabi'een.

Taabi'een: (Sing. Taabi'ee, lit. follower); those who met and studied under the Sahabah (RA) and died as Muslims.

Tafseer: An explanation of the meanings of the Qur'anic word and verses within a specific methodology.

Taqleed: Following of another person's opinion without a binding proof.

Taqriri: Approval.

Taqwaa': The protection of one's self from the punishment of Allah (SWT) by doing what He (SWT) has commanded and avoiding what He (SWT) has forbidden.

Tashri: Legislation.

Tawheed: The purely unitarian concept of Allah (SWT) found only in Islam, in which Allah (SWT) is unique in being the Creator, in being worshipped, and in His essence, names and attributes.

Thanniy: (Lit. speculation, doubt) an evidence which has more than one meaning or an evidence which is not conclusive in proof.

Ulema: (Sing. 'Alim) literally scholars but commonly used to refer to scholars in Islam.

Usul al Fiqh: Collection of rules pertaining to the methodology for extracting rules from the Islamic legislative sources.

Wahi'y: Revelation.

Wajib: An obligatory action synonymous to Fard. If the individual performs the action then he is rewarded. Whereas, the failure to perform the action results in a punishment.

Zakah: An act of worship requiring a Muslim to pay a certain portion of his wealth to the Bait ul Mal of the Islamic State for distribution towards eight specific categories.